

No. 10938

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE FRANKLIN FIRE INSURANCE CO.
OF PHILADELPHIA, PENNSYLVANIA,
a Corporation,

Appellant,

vs.

OLUF B. HANNEY, HANS MIKELSEN and
PAUL VOHL,

Appellees.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 133

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

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SUPPLEMENTAL
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL
MESSRS. HAYDEN, MERRITT, SUMMERS &
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840 Central Building,
Seattle 4, Washington

Attorneys for Appellant.

MR. C. E. H. MALOY,

990 Dexter Horton Building
Seattle 4, Washington

Attorney for Appellee. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 718

OLUF B. HANNEY, HANS MIKELSEN, and
PAUL VOHL,

Plaintiffs,

vs.

THE FRANKLIN FIRE INSURANCE CO. OF
PHILADELPHIA, PENNSYLVANIA,
a corporation,

Defendant.

AMENDED COMPLAINT

For a first cause of action or count, plaintiffs
complain of defendant and allege:

I.

Plaintiffs are citizens and residents of the City
of Seattle, County of King, State of Washington;
defendant is a corporation incorporated under the
laws of the State of Pennsylvania. The matter in
controversy exceeds, exclusive of interest and costs,
the sum of Three Thousand Dollars (\$3000.00).

II.

On August 20, 1941, and at all times hereinafter
mentioned, the plaintiffs were the owners of the
good halibut boat called the hull #20, then being
built at Brown's Point, Tacoma, Washington, and
plaintiffs on or about August 20, 1941, desiring to

effect insurance against risks, including fire, on said halibut boat #20, then being built, and upon all materials being acquired and accumulated for her construction, and upon all apparel, ordinance, appurtenances, boats, furniture, fixtures, and materials being and to be acquired for and belonging and destined for said halibut boat #20, on August 20, 1941, at Seattle, Washington, in consideration of the payment by the plaintiffs to the defendant of a premium of \$111.00, the defendant made, executed and delivered to plaintiffs its policy of insurance in writing, a copy of which is [2] marked Exhibit "A" to plaintiffs' complaint on file herein, and by reference is made a part hereof, and a copy of which is in defendant's possession.

III.

Thereafter, and on or about November 20, 1941, plaintiffs and defendant, acting by Chester J. Chastek Co., defendant's duly authorized agent, entered into an oral agreement, whereby the defendant agreed to renew or extend said insurance for the period of 30 days from November 20, 1941, and the said defendant further agreed that it would renew said insurance for successive periods of 30 days thereafter, and keep said insurance in full force and effect until the building of said halibut boat #20 should be completed, such renewed or extended insurance to be upon the same terms and conditions as the hull policy and builder's risk policy hereinbefore mentioned, with the exception of such changes as might be necessary on account of

the progress of the building of such vessel, and the increased valuation thereof, in consideration of which the said plaintiffs promised and agreed to pay to said Chester J. Chastek Co., defendant's agent, additional premiums upon the receipt of bills from said Chester J. Chastek Co. evidencing the amount of such additional premiums; pursuant to such agreement, defendant renewed and extended such insurance for successive periods of 30 days each, to and including February 20, 1942; on February 20, 1942, the said defendant renewed and extended said insurance for a period of 30 days from February 20, 1942, to March 22, 1942; that said extended or renewed insurance was effective on said date, but the renewal endorsement was dated February 25, 1942; defendant's agent Chester J. Chastek Co. billed plaintiffs for the renewal premium of \$120.00, and plaintiffs paid the same to defendant's agent. The failure to date said endorsement February 20, 1942, [3] instead of February 25, 1942, renewing and extending said insurance was due to the fault and neglect of the said defendant and/or its agent, and such renewed and extended insurance was actually in force and effect; in the event defendant failed to renew and extend said insurance until February 25, 1942, the defendant violated and breached its oral agreement to keep such insurance renewed, extended, and in full force and effect.

IV.

In September, 1941, and to and inclusive of February 24, 1942, the plaintiffs were the owners of the halibut boat #20, and of tackle, apparel, furni-

ture, fixtures and material which belonged to and was destined for the halibut boat #20, then being built, all of which property was covered by the provisions of the above-described written policy of insurance, and all of which property was stored in locker #325 at the Salmon Bay Terminal of the Port of Seattle, City of Seattle, Washington; at all said times and while such above-described personal property was stored in said locker #325, and until after February 24, 1942, the plaintiffs were the sole and exclusive owners and in sole and exclusive possession and control of said locker #325, and all of such personal property was stored in such locker #325 during all of such time for the express purpose of being attached to, used upon and in the operation of said halibut boat #20 and in the equipping and outfitting and building of said halibut boat #20. On February 24, 1942, all the said above-described personal property was totally destroyed by fire, and all of such property became a total loss. Said property was at the time of said fire and loss of the value of \$14,160.14; an itemized statement of such personal property, together with the valuation of each item thereof, is marked Exhibit "B", attached to plaintiff's complaint on file herein, and made a part hereof. [4]

V.

Plaintiffs have made demand upon defendant for payment of said loss, that there is due and owing to plaintiffs from defendant the sum of \$14,160.14,

and defendant has failed, neglected and refused to pay the same or any part thereof.

For a Second Cause of Action and count against defendant, and in the event plaintiffs' first cause of action is not sustained, plaintiffs allege:

I.

Plaintiffs re-allege paragraphs I, III, IV and V of plaintiffs' First Cause of Action or count, hereinbefore set forth, and by reference thereto make the same a part of this cause of action or count.

II.

On or about August 20, 1941, the defendant, by its duly authorized agent, Chester J. Chastek Co., solicited of plaintiffs builder's risk and fire insurance coverage upon the halibut boat #20, at all times herein mentioned owned by plaintiffs, and all materials and equipment to be incorporated in or upon such vessel, owned by plaintiffs. Plaintiffs then informed Chester J. Chastek Co. that they desired builder's risk and fire insurance coverage upon the halibut boat #20 to be constructed, and upon all materials and equipment to be incorporated or used in the building, outfitting, and equipping of such vessel, and that they intended to purchase and store tackle, apparel, appurtenances, fixtures and materials at Seattle, Washington; it was then orally agreed between plaintiffs and defendant, acting by Chester J. Chastek Co., its duly authorized agent, that defendant would write and furnish to plaintiffs, and plaintiffs would accept from defend-

ant, such builder's risk and fire insurance coverage insuring the halibut boat #20, to be built, and all materials and equipment to be used [5] in her building, outfitting and equipment, whether located at Brown's Point, Tacoma, or at Seattle, Washington, for the period from August 20, 1941, to November 20, 1941, in consideration of the promise of plaintiffs to pay to defendant a premium of \$111.00. Thereafter, defendant, by its agent, Chester J. Chastek Co., made, executed and delivered to plaintiffs hull policy #44298, and attached thereto "Builder's Risk Form #50, Amended", a copy of which is marked Exhibit "A", attached to and made a part of plaintiffs' complaint on file herein, and made a part hereof by reference, the defendant, through its said agent, representing to plaintiffs that the following in such policy:

"On hull tackle, apparel, ordinance, munitions, artillery, engines, boilers, machinery, appurtenances, etc., (including plans, patterns, moulds, etc.) Boats and other furniture and fixtures and all material belonging and destined for Hull 20, building at Brown's Point, Tacoma, Washington, as per clauses hereinbelow specified."

and

"This insurance is also to cover all risks, including fire, while under construction and/or fitting out, including materials in buildings, workshops, yards and docks of the assured, or on quays, pontoons, craft, etc., and all risk while in transit to and from the works and/or the vessel wherever she may be lying."

and such policy, fully insured plaintiffs against all loss or damage by reason of the risks named therein, including fire, to all of the above-described character of property stored in the City of Seattle, which was intended and belonged, or was destined for the halibut boat #20, described in said policy. Plaintiffs had no knowledge or means of knowledge as to the truth or falsity of such representations, the truth and falsity of same was not readily ascertainable, and plaintiffs believed such representations to be true, and that said policy fully insured them as against loss or damage by fire to any tackle, apparel, appurtenances, fixtures and materials belonging and destined for the halibut boat #20, which they might store in the City of Seattle.

[6]

Wherefore, plaintiffs pray for judgment against defendant as follows:

First: For judgment upon plaintiffs' First Cause of Action or Count, in the sum of \$14,160.14, and interest.

Second: In the event recovery is denied upon plaintiffs' First Cause of Action or Count, for a decree of this Court reforming said policy of insurance, and particularly the "Builder's Risk Form #50, Amended", so that said policy shall insure the plaintiffs for the 30-day period from February 20, 1942 to March 22, 1942, and shall cover and insure tackle, apparel, appurtenances, fixtures and materials stored at Seattle during the currency of said

policies, and for a decree against defendant in the sum of \$14,160.14, and interest.

Third: For plaintiffs' costs herein expended.

C. E. H. MALOY

Attorney for Plaintiffs.

United States of America

State of Washington

County of King—ss.

Paul Vohl, being first duly sworn, on oath deposes and says: That he is one of the plaintiffs above named; that he has read the foregoing Amended Complaint, knows the contents thereof, and believes the same to be true.

PAUL VOHL

Subscribed and sworn to before me this 10th day of September, 1943.

[Seal] C. E. H. MALOY

Notary Public in and for the State of Washington,
residing at Seattle.

Copy Received Sept. 10, 1943.

HAYDEN, MERRITT, SUM-
MERS & BUCEY

Attorneys

[Endorsed]: Filed Sep. 10, 1943. [7]

PLAINTIFFS' EXHIBIT A

Pacific Northwest Marine Department
Endorsement

Additional Premium \$75.00

Return Premium \$....

BUILDERS' RISK POLICY

(Classification or Conveyance)

For and in consideration of an additional premium of \$75.00 (being figured at 25c% on \$30,000.00 insurance) it is hereby understood and mutually agreed that this policy is extended for one month from March 22, 1942 to April 22, 1942, beginning and ending at Noon Pacific Standard Time.

All Other Terms and Conditions of this
Policy Remain Unchanged

Attached to and forms part of Policy No. 44298 of The Franklin Fire Insurance Co. issued to Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf F. Hanney, Owner.

Dated at Seattle, Washington, March 22, 1942.

CHESTER J. CHASTEK CO.

MAin 9840

KENNETH H. WHEELOCK

aw 3/20/42 [8]

Pacific Marine Department

Endorsement

Additional Premium \$120.00

Return Premium \$....

BUILDERS' RISK

(Classification or Conveyance)

For and in consideration of an additional premium of \$75.00 (being figured @ 25c on \$30,000.00 insurance), it is hereby understood and mutually agreed that the amount of insurance under this policy is increased to \$30,000.00 valued at \$30,000.00 and notwithstanding anything contained herein to the contrary, it is hereby understood and mutually agreed that this policy is extended to cover machinery or its appurtenances, and it is further understood and agreed that this policy is extended for one month from February 20, 1942 to March 22, 1942.

For and in consideration of a further additional premium of \$45.00, it is hereby understood and mutually agreed that this policy is extended to cover launching and trial trips subject to the following clauses:

“All risks of launching and breakage of the ways.

This insurance is also to cover all risks of trial trips, loaded or otherwise, as often as required, and all risks whilst proceeding to and returning from the trial course but warranted that all trials shall be carried out within a dis-

tance by water of 100 nautical miles of the place of construction or held covered at a rate to be arranged.

In case of failure of launch, underwriters to bear all subsequent expenses incurred in completed launch."

**All Other Terms and Conditions of This
Policy Remain Unchanged**

Attached to and forms part of Policy No. 44298 of The Franklin Fire Insurance Company issued to Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf B. Hanney, Owner.

Dated at Seattle, Washington, February 25, 1942.

[Stamped]: Received Feb. 27, 1942. Chastek.

[9]

Marine Department

[In longhand]: 2/Illegible/42

January 20, 1942

to be attached to and forming part of

Policy No. 44298

Endorsement of The Franklin Fire Insurance Company.

Assured: Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf B. Hanney, Owner.

For and in consideration of an additional premium of \$37.50, (being figured at 25c% on \$15000.00 insurance) it is hereby understood and mutually agreed that this policy is extended for thirty (30) days from January 20, 1942, to February 20, 1942, beginning and ending at Noon, Pacific Standard Time.

It is further understood and agreed that the valuation of the hull for insurance purposes is changed to read \$15,000.00 with the amount of insurance carried \$15,000.00.

All other terms and conditions of policy remaining unchanged.

.....

Agent

aw 1/26/42 [10]

Pacific Marine Department

Endorsement

Additional Premium \$22.50

Return Premium \$....

BUILDERS' RISK

(Classification or Conveyance)

For and in consideration of an additional premium of \$22.50, it is hereby understood and agreed that this policy is extended to cover launching and trial trips subject to the following clauses:

“All risks of launching and breakage of the ways.

This insurance is also to cover all risks of trial trips, loaded or otherwise, as often as required, and all risks whilst proceeding to and returning from the trial course but warranted that all trials shall be carried out within a distance by water of 100 nautical miles of the place of construction or held covered at a rate to be arranged.

In case of failure of launch, underwriters

to bear all subsequent expenses incurred in completing launch.”

Notwithstanding anything contained herein to the contrary, the following clause is deleted from the policy to which this endorsement is attached:

Notwithstanding anything contained herein to the contrary, it is mutually understood and agreed between the Assured and this Company that this policy does not cover machinery or its appurtenances.

and it is understood and agreed that this policy is extended to cover machinery or its appurtenances.

It is further understood and agreed that the completed price of this hull and machinery is \$30,000 and this policy is written in the amount of \$15,000 valued at \$30,000.

**All Other Terms and Conditions of This
Policy Remain Unchanged**

Attached to and forms part of Policy No. 44298 of Franklin Fire Insurance Company issued to Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf B. Hanney, Owner.

Dated at Seattle, Washington, December 23, 1941.

..... [11]

Pacific Northwest Marine Department
Endorsement

Additional Premium \$37.50
Return Premium \$....

BUILDERS' RISK

(Classification or Conveyance)

For and in consideration of an additional premium of \$37.50, (being figured at 25c% on \$15000.00 insurance) it is hereby understood and mutually agreed that this policy is extended for thirty (30) days from December 20, 1941 to January 20, 1942, beginning and ending at Noon, Pacific Standard Time.

All Other Terms and Conditions of This
Policy Remain Unchanged

Attached to and forms part of Policy No. 44298 of The Franklin Fire Insurance Co. issued to Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf B. Hanney, Owner.

Dated at Seattle, Washington, December 20, 1941.

CHESTER J. CHASTEK CO.

MAin 9040

aw 12/18/41 [12]

Marine Department

November 20, 1941

to be attached to and forming part of

Policy No. 44298

Endorsement of Franklin Fire Insurance Company.

Assured: Peter Petersen d/b/a Marine View Boat Building Co., Builder, and Oluf B. Hanney, Owner.

For and in consideration of an additional premium of \$37.50, (being figured at 25c% on \$15000.00 insurance) it is hereby understood and mutually agreed that this policy is extended for thirty (30) days from November 20, 1941 to December 20, 1941, beginning and ending at Noon, Pacific Standard Time.

All other terms and conditions of policy remaining unchanged.

CHESTER J. CHASTEK CO.

MAin 9040

KENNETH H. WHEELOCK

Agent

aw 11/19/41 [13]

Additional clauses referred to on the face hereof:

Damage to Ways Clause: Nothing in this policy shall be construed to insure against or cover any loss, damage or expense in connection with docks, shipways, tools or any other property of the shipyard not intended to be incorporated in the vessel, excepting staging, scaffolding and similar temporary construction the value of which is included in the contract price of the vessel and excepting any loss, damage or expense for which underwriters may be liable under the protection and indemnity clauses; provided, nevertheless, that in the case of failure of launch, Underwriters shall bear all subsequent expenses incurred in completing launch.

Builders' Risk Constructive Total Loss Clause: There shall be no recovery for a Constructive Total Loss under this policy unless the expense of recovering the vessel and restoring her to the condition

she was in prior to the loss would exceed her value in that condition, which value shall be determined by applying to the completed contract price the percentage of the vessel which was completed at the time of the loss; and no claim for a Constructive Total Loss hereunder shall exceed this policy's proportion of the value so computed, plus this policy's proportion of any damage to material insured hereunder and not yet installed in the vessel.

This insurance is understood and agreed to be subject to English Law and usage as to Liability for and in settlement of any and all claims.

Notwithstanding anything contained herein to the contrary it is mutually understood and agreed between the Assured and this Company that this policy does not cover machinery or its appurtenances.

[14]

(Cut)

The Franklin Fire Insurance Co. of Philadelphia
Pennsylvania

No. 44298

Amount \$15000.00

Rate 74c%

Premium \$111.00

By This Policy of Insurance

Does Insure—Peter Petersen d/b/a Marine View
Boat Building Co., Builder, and Oluf B.
Hanney. Owner.

Loss, if any, payable to Assureds

or order, as follows:

In consideration of the said person or persons effecting this Policy promising to pay to the said Company the sum of One Hundred Eleven and no/100 Dollars as a premium at and after the rate of 74c% per cent for such insurance the said Company takes upon itself the burden of such insurance to the amount of Fifteen Thousand and no/100 Dollars and promises and agrees with the assured, their Executors and Administrators in all respects truly to perform and fulfill the Contract contained in this Policy And it is hereby agreed and declared that the said Insurance shall be and is an insurance upon As Per Form Attached valued at \$15000.00— Fifteen Thousand and no/100 Dollars of and in the good Halibut Boat called the Hull #20 (Being Built) or by whatsoever other name or names the said ship is or shall be named or called, lost or not lost, at and from August 20, 1941 to November 20, 1941, Beginning and Ending at Noon, Pacific Standard Time.

Touching the adventures and perils which the said Company is content to bear and does take upon itself; they are of the seas, fires, pirates, rovers, assailing thieves, jettisons, criminal barratry of the master and mariners, and of all other like perils, losses and misfortunes, that have or shall come to the hurt, detriment, or damage of the aforesaid subject matter of this insurance or any part thereof.

In case of any loss or misfortune it shall be lawful and necessary for the Assured, their factors, servants and assigns, to sue, labor, and travel for,

in and about the defence, safeguard, and recovery of the aforesaid subject matter of this insurance, or any part thereof, without prejudice to this insurance; the charges whereof the said Company shall bear in proportion to the sum hereby insured.

It is expressly declared and agreed that no acts of the said Company or Assured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

Either party may cancel this Policy by giving fifteen days' notice in writing, if in port of destination; if on voyage the cancellation to take effect three days after arrival at port of destination; if at the option of this Company pro-rata rates, if at the request of the Assured short rates, will be charged. From all return premiums the same percentage of deduction (if any) shall be made as was allowed by this Company on receipt of original premium.

In Witness Whereof, this Company has executed and attested these presents; but this Policy shall not be valid unless countersigned by a duly authorized Agent of this Company at place of issue.

H. V. SMITH

President

WALTER F. BEYER,

Secretary

Countersigned at Seattle, Wash. this 20th day of August, 1941

CHESTER J. CHASTEK CO.

MAin 9040

KENNETH H. WHEELOCK

[Printed in margin]:

Unless physically deleted by the Underwriters, the following warranties shall be paramount and shall supersede and nullify any contrary provision of the Policy:

Notwithstanding anything to the contrary contained in the Policy, this insurance is:

(a) Warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or war-like operations (whether there be a declaration of war or not), piracy, civil war, revolution, rebellion or insurrection, or civil strife arising therefrom.

(b) Warranted free of loss or damage caused by or resulting from strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrence or disorder.

If war risks and/or strike, riot and civil commotion risks are hereafter insured by endorsement on the policy, such endorsement shall supersede the above warranties only to the extent that the terms of the endorsement are inconsistent with the warranties and only while such endorsement remains in force. [15]

HULL POLICY

The Franklin Fire Insurance Company
of Philadelphia
Pennsylvania
Marine Department

No. 44298

Assured: Peter Petersen d/b/a Marine View
Boat Building Co., Builder, and Oluf B. Hanney,
Owner.

Vessel: Hull #20 (Being Built)

Amount: \$15000.00

Rate: 74c%

Premium: \$111.00

Expires: November 20, 1941

Chester J. Chastek Co.
Insurance and Bonds
Insurance Bldg.
Second Ave. at Madison St.
MAin 9040
Seattle

Pacific Marine Department
341 Montgomery St., San Francisco, Calif.
Clayton E. Roberts, Marine Manager [16]

PLAINTIFFS' EXHIBIT "B"

LIST OF PROPERTY DESTROYED

Number	Quantity	Value
6500 only 6" Sel. corks.....		1430.00
260 fathoms 3" - 4 Strand Bolt Rope.....	468 lbs.	149.76
65 only 4" inch Brass Rings.....	65 lbs.	58.50
200 fathoms 2¼ - 4 Strand Purse Rope....	234 lbs.	77.22
175 only Montara bags and Rubber.....	175	743.75
14 only C.J.H. 16" Rubber Boveys.....	14	112.00
40 fathoms 3½ - 4 Strand Bolt Rope.....	90 lbs.	29.70
20 only 3 inch galv. Rings.....	1½	14.17
120 fathoms 3½ Manila Rope	258 lbs.	67.08
1 strip 300 fathoms 1¾ - 21 th 20 mesh Cotton Netting	190 lbs.	170.24
1 strip 300 fathoms 1¾ - 12 th 400 meshes Deep Cotton Netting.....	1400 lbs.	1411.20
4 strip 300 fathoms 1¾ - 9th 400 mesh Deep Cotton Netting	3600 lbs.	4060.80
1 strip 300 fathoms 1¾ - 54 th 6" mesh Cotton Netting	900 lbs.	712.80
11 only sq Book Mattresses	11	104.50
11 only Vest Life Preservers.....	11	48.40
50 Fathoms 3¾" Manila Rope	123 lbs.	31.98
50 fathoms 3½" Manila Rope	108 lbs.	28.08
1 large Purse Drum	1	175.00
1 small Purse Drum	1	75.00
2 only 1" inch galv. Screw Anchor Shackles	2	4.40
2 only 7/8" galv. Screw Anchor Shackles	2	3.40
2 only 7" 21-C galv. Wood Blocks.....	2	4.90
2 only 7" 22-C galv. Wood Blocks.....	2	7.90
50 fathoms 2½ Manila Rope	59 lbs.	15.34
1 only 5 gal. garbage can.....		2.25
80 only ½ x 6 galv. Purse Rings.....	80	96.00
2 only 1" galv. Screw Anchor Shackle..	2	4.40
2 only 1" galv. Side Hooks.....	2	3.00
1 only 8" galv. Cleat		1.10
2 only Bandir Hoops	2	11.00
4000 lbs. 4 oz. 5/8" Leads		520.00
175 fathoms 4½" Manila Rope.....	630 lbs.	201.60
1 only 10'x10' No. 6. Brailer Canvas....		12.00

Number	Quantity	Value
2 200 mesh x 200 mesh 1 $\frac{3}{8}$ mesh 54 th Cotton Netting	124 lbs.	98.21
4 only Brailer Handles	4	8.00
10 tons $\frac{3}{4}$ H.g. Salts	10	190.00
4 only No. 2 Scoop Shovels.....	4	7.00
1 only Oak David	1	85.00
1 strip 200 fathoms 400 mesh 1 $\frac{3}{8}$ meshes 6 th Cotton Netting.....	520	586.56
1 only Submarine Light and cord.....	1	100.00
1 strip 30 fathoms 1 $\frac{3}{8}$ - 18th 400 mesh Deep Cotton Netting	180 lbs.	161.28
1 strip 30 fathoms 1 $\frac{3}{8}$ - 18th 400 mesh Deep Cotton Netting	180 lbs.	161.28
1 strip 30 fathoms 1 $\frac{3}{8}$ - 15 th 400 mesh Deep Cotton Netting	163 lbs.	157.08
1 only Life-Boat		103.00
2 per. 10 ft. Ash Oars	40 ft.	14.00
2 per. No. 3 galv. Oar locks.....	2	2.00
200 fathoms 4 $\frac{1}{2}$ " Manila Rope.....	720	194.40
4 only 1 $\frac{1}{2}$ " galv. Open Turnbuckles J. H.	4	5.72
350 fathoms $\frac{5}{8}$ " galv. 6/24 Purse Wire....		330.00
4 15 fathoms 5" Manila Rope.....	267 $\frac{1}{2}$ lbs.	72.22
Pen Boards		250.00
1 only 12" galv. 22-C Com Double Wood Blocks	1	15.65
2 only 12" galv. 21-C Com Single Wood Blocks	2	19.80
2 only 10" galv. 22-C Com Double Wood Blocks	2	18.00
2 only 10" galv. 21-C Com Single Wood Blocks	2	11.50
1 only 10" galv. Blocks	1	15.00
50 fathoms $\frac{5}{8}$ " galv. 6/24 Purse Wire....		50.00
40 ft. 2" Rubber Deck Hose.....	40	32.00
1 only 2" Brass Hose Nozzle.....		3.00
4 only Deck Scurbers and Hande.....	4	4.60
2 only 12 qt. Heavy galv. Buckets.....	2	3.50
1 strip 160 fathom 1 $\frac{3}{8}$ - 9th 400 mesh Deep Cotton Netting	480 lbs.	541.44
2 only Hand Made Purse Blocks.....	2	70.00

Number	Quantity	Value
2 only Unloading Brailers.....	2	15.00
1 only 10" Cargo Block.....	1	35.00
		<hr/>
		13,747.71
	Sales Tax	412.43
		<hr/>
	Total	14,160.14
		[19]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

The above entitled action having duly and regularly come on for hearing before the above entitled court, the undersigned Judge presiding, upon the motion of plaintiffs to dismiss without prejudice and without costs the second cause of action contained in their amended complaint, and it appearing to the court that considering the status of the record this dismissal should not be permitted unconditionally, and that plaintiffs should be required to elect to stand and rely upon their first cause of action in said amended complaint and upon appeal from judgment heretofore entered by the court dismissing the same, or upon their second cause of action in said amended complaint; and it further appearing to the court that the plaintiffs, through C. E. H. Maloy, Esquire, their attorney of record, has in open court made election in behalf of said plaintiffs to stand and rely upon said first cause of action, and to waive said second cause of action; and the court being otherwise fully advised;

Now, Therefore, it is hereby Ordered that said

second cause of *caust* be, and the same hereby is, dismissed without costs.

Done in open court this 29th day of November, 1943.

JOHN C. BOWEN

United States District Judge

Approved by

C. E. H. MALOY

Attorney for Plaintiffs

Approved by:

MATT STAFFORD

LANE SUMMERS

Attorneys for Defendant.

[Endorsed]: Filed Nov. 29, 1943. [20]

Title of District Court and Cause.]

REQUEST FOR ADMISSIONS UNDER
RULE 36

Defendant, The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, requests plaintiffs, Oluf B. Hanney, Hans Mikelsen and Paul Vohl, to make on or before October 15, 1944, the following admissions for the purpose of this action only, and subject to all pertinent objections to admissibility which may be interposed at the trial:

(1) That the following document, exhibited with this request, is genuine:

(1)-a. Agreement of May 14, 1941, between Peter Petersen and Oluf B. Hanney.

(2) That each of the following statements is true:

(2)-a. That performance by Peter Petersen of the contract of May 14, 1941, exhibited herewith, did not require the use of any of the property described in Exhibit B, attached to plaintiff's original complaint herein.

(2)-b. That there was not incorporated in Hull #20 during its construction by Peter Petersen under the contract May 14, 1941, exhibited herewith, any of the following items:

6500 only 6" Sel. corks

260 fathoms 3"—4 strand Bolt Rope

65 only 4" inch Brass Rings

200 fathoms 2 $\frac{1}{4}$ —4 strand purse rope

175 only Montara bags and Rubber

14 only C.J.H. 16" Rubber Boveys

40 fathoms 3 $\frac{1}{2}$ —4 strand Bolt Rope

20 only 3 inch galv. Rings [21]

120 fathoms 3 $\frac{1}{2}$ Manila Rope

1 strip 300 fathoms 1 $\frac{3}{8}$ —21 th. 20 mesh cotton netting

1 strip 300 fathoms 1 $\frac{3}{8}$ —12 th. 400 meshes Deep Cotton Netting

4 strip 300 fathoms 1 $\frac{3}{8}$ —9 th. 400 mesh Deep Cotton Netting

1 strip 300 fathoms 1 $\frac{3}{8}$ —54 th. 6" mesh Cotton Netting

50 fathoms 3 $\frac{3}{4}$ " Manila Rope

50 fathoms 3 $\frac{1}{2}$ " Manila Rope

50 fathoms 2 $\frac{1}{2}$ Manila Rope

1 only 5 gal. garbage can

80 only 1 $\frac{1}{2}$ x 6 galv. Purse Rings

- 2 only Bandir Hoops
- 4000 lbs. 4 oz. 5/8" Leads
- 175 fathoms 4 1/2" Manila Rope
 - 1 only 10'x10' No. 6 Brailer Canvas
 - 2 200 mesh x 200 mesh 1 3/8 mesh 54 th. Cotton Netting
 - 4 only Brailer Handles
- 10 tons 3/4 H.g. Salts
 - 4 only No. 2 Scoop Shovels
 - 1 strip 200 fathoms 400 mesh 1 3/8 meshes 6 th. Cotton Netting
 - 1 only Submarine Light and cord
 - 1 strip 30 fathoms 1 3/8—18 th. 400 mesh Deep Cotton Netting
 - 1 strip 30 fathoms 1 3/8—18 th. 400 mesh Deep Cotton Netting
 - 1 strip 30 fathoms 1 3/8—15 th. 400 mesh Deep Cotton Netting
 - 2 per. 10 ft. Ash Oars
- 200 fathoms 4 1/2" Manila Rope
- 350 fathoms 5/8" galv. 6/24 Purse Wire
 - 4 15 fathoms 5" Manila Rope
- 50 fathoms 5/8" galv. 6/24 Purse Wire
- 40 ft. 2" Rubber Deck Hose
 - 1 only 2" Brass Hose Nozzle
 - 4 only Deck Scurbers and Hande
 - 2 only 12 qt. Heavy Galv. Buckets
 - 1 strip 160 fathoms 1 3/8—9 th. 400 Mesh Deep Cotton Netting
 - 2 only Unloading Brailers

(2)-c. That during September, 1941, all of the property described in Exhibit B, attached to plain-

tiffs' original complaint herein, was sold by Henry Stakset of Tacoma, Washington.

(2)-d. That during September, 1941, all of the property described in Exhibit B, attached to plaintiffs' original complaint herein, was sold by Henry Stakset of Tacoma, Washington, for the total price of \$4000.00.

(2)-e. That all of the property described in Exhibit B, attached to plaintiffs' original complaint herein, was used, second-hand property at the time it was sold by Henry Stakset in September, 1941.

[22]

(2)-f. That the agreement of May 14, 1941, exhibited with this request, is the agreement under which Hull No. 20, referred to in said agreement and in Franklin Fire Insurance Company of Philadelphia, Pennsylvania, policy number 44298, was constructed.

(2)-g. That performance of the contract of May 14, 1941, exhibited herewith, by Oluf B. Hanney, one of the plaintiffs herein, did not require said Oluf B. Hanney to acquire any of the property described in Exhibit B, attached to plaintiffs' original complaint herein.

(2)-h. That performance of the contract of May 14, 1941, exhibited herewith, by Oluf B. Hanney, one of the plaintiffs herein, did not require said Oluf B. Hanney to provide for use in the construction of Hull No. 20 any of the property described in

Exhibit B, attached to plaintiffs' original complaint herein.

HAYDEN, MERRITT, SUM-
MERS & STAFFORD
By MATTHEW STAFFORD
Attorneys for Defendant [23]

AGREEMENT

This Agreement made and entered into this 14th day of May, 1941, by and between Peter Petersen, of Brown's Point, Tacoma, Washington, doing business as Marine View Boat Building Co. herein called "First Party" and Oluf B. Hanney of Ketchikan, Alaska, herein called "Second Party"

Witnesseth

Whereas, second party is desirous of having built for him a purse seine type of fishing vessel, and

Whereas, first party is engaged in the business of building such type of vessels and is desirous of building such vessel for said second party.

Now, Therefore, It Is Hereby Agreed by and between the parties hereto as follows:

That first party agrees to build and construct in a first-class workmanlike manner, a purse seine type of vessel in accordance with plans and specifications to be drawn by first party, and approved by second party,—said construction to be as is customary in vessels of this type and, to more specifically—both as to equipment and materials—be similar to those used in the construction and equipping of the D. S. "Nordic Pride" a partial itemization of the require-

ments of said vessel and its dimensions to be as follows, to-wit:

Length over all—76 feet

Beam—20 feet

Moulded depth—9'6"

Keel—12 x 14"

Stem—12 x 18"

Keelson—14 x 16"

Deadwood—12 x 14"

Shaft log—12 x 14"

Sternpost—12 x 14" (oak)

Horn timber—12 x 12"

Guards—2 x 8"

Frames—3 x 4" net (oak 10" center)

Bilge stringers 3 x 6"

Planking 2" net

Inside ceiling 1¾" net

Deck beams 10 x 10" and 6 x 10"

Knees 6, 6 x 6"

Deck 2 x 3½" net

Caulking 1 thread oakum and 1 thread cotton

Covering board 2¼" net

Coamings 4"

Fuel tanks—4 thousand gallons

Lubrication oil tanks—200 gallons [24]

Water tanks—1200 gallons

Mast—42'

Boom—34'

Standing rigging 5/8"

One 8" Hawse pipe and 4 mooring rings

Deckhouse and forecastle and one turntable

3 coats of paint throughout

Said vessel shall be complete in all respects and shall be equipped with:

A 240 H.P. Washington Diesel Engine and its equipment, including two steady bearings, babbitted

4 stuffing box hanger bolts

6 stern-bearing hanger bolts

Doran 3-blade bronze propeller, one #3 whistle, one Quincy auxilliary air compressor

2 24 x 88" airtanks

one sailing clutch

one Electro Pneumatic Engine Controls

One propeller shaft brake and other standard equipment, spare engine parts and tools.

It Is Understood and Agreed that the vessel herein contemplated shall be known and designated as Hull #20 during its construction, and that the keel for the same shall be laid immediately after Hull #16 (now being constructed) shall have been launched;

It Is Further Understood and Agreed that said vessel shall be built in as speedily a manner *and* diligence and good workmanship will permit, and that the finished boat shall be delivered to second party at Astoria, Oregon, immediately after completion and installation of engine, said trip to Astoria, Oregon, to constitute said vessel's trial trip.

It Is Further Agreed, however, that first party shall not be held liable to second party for any delay in the delivery of said vessel caused by strikes, riots, fire, the elements or Acts of God, or

delay in delivery of materials for or accidents to said vessel during the course of construction, nor for any delay in the building of said vessel which is beyond the control of first party.

It Is Further Understood and Agreed that first party shall procure and have issued in favor of second party, and second party's wife, a bond issued by a reliable surety company, in the sum of Thirty Thousand (\$30,000.00) Dollars, to be modified by being increased or decreased according to the final con- [25] tract price to be determined as hereinafter provided—said bond to be conditioned that first party will perform and fulfill the terms and conditions of this contract and deliver said vessel to second party at Astoria, Oregon, free and clear of any and all claims and liens; It Is Agreed, however, that second party shall pay the premium for such bond.

It Is Further Understood and Agreed that first party shall procure builder's risk insurance—the premium for which second party shall also pay.

It Is Further Understood and Agreed that second party shall pay unto first party for said vessel—complete with equipment and engine—the sum of Thirty Thousand (\$30,000.00) Dollars, payable as follows, to-wit:

Payment #1—Two Thousand (\$2000.00)
Dollars contemporaneously herewith

Payment #2—Twenty-five Hundred (\$2-
500.00) Dollars when keel is laid

Payment #3—Twenty-five Hundred (\$2-
500.00) Dollars when ribs are in

Payment #4—Twenty-five Hundred (\$2-500.00) Dollars when decking is laid

Payment #5—Twenty-five Hundred (\$2-500.00) Dollars when vessel is launched

Payment #6—Eight Thousand (\$8,000.00) Dollars when engine is ready for delivery

Payment #7—Two Thousand (\$2,000.00) Dollars when winches are installed

Payment #8—Balance after trial trip to Astoria, Oregon and acceptance of vessel by second party at Astoria, Oregon.

It Is Understood that payments need not necessarily be made in the order above designated and, if requested by the bonding company furnishing the performance bond contemplated herein, It Is Further Agreed that payments Nos. 1, 6 and One Thousand Nine hundred sixty-six (\$1,966.00) Dollars of payment No. 8 shall be made directly to the Washington Iron Works, Seattle, from whom it is agreed the engine shall be purchased, or said payments shall be made jointly to first party and said Washington Iron Works and the balance of said payment No. 8—whether more or less than Three Thousand (\$3,000.00) Dollars to be determined as hereinafter provided—shall be made to both first party and the bonding company furnishing the performance bond contemplated herein. [26]

It Is Also Understood And Agreed that second party shall have the right and privilege of selecting the winches, toilet, sinks, pipe railings, or installation pipes or piping, all finish hardware, stove, and

all fitting for cabin, galley and pilot house, light plant, and—that the total sum of this contract shall be increased or decreased from Thirty Thousand (\$30,000.00) Dollars accordingly as the purchase price of such items—together with the expense of the installation of the engine for said vessel and installation of the light plant and wiring in said vessel, and expense of installation of winches, and sinks,—totals, when added to the sum of Twenty-seven Thousand nine hundred sixty-six (\$27,966.00) Dollars.

It Is Also Understood And Agreed that in the event of sales tax be legally required to be paid, that second party shall pay the same.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first above written.

(Signed) PETER PETERSEN

First Party

(Signed) O. B. HANNEY

Second Party

[Endorsed]: Filed Oct. 19, 1944. [27]

[Title of District Court and Cause.]

STATEMENT IN RESPONSE TO REQUEST
FOR ADMISSIONS UNDER RULE 36

Now come the plaintiffs and object to each and every request for admissions heretofore made by the defendant upon plaintiffs upon the ground and

for the reason that each and every of said questions embraced in such request for admissions is wholly irrelevant and immaterial to any issue in this case.

Subject to the above objection to answering the request for admissions, plaintiffs make the following statement:

(1) The documents, i.e., agreement of May 14, 1941, between Peter Petersen and Oluf B. Hanney, appears to be a true copy of the original agreement.

(2) (2-a) The performance by Peter Petersen of the contract of May 14, 1941, did not require the use of any of the property described in Exhibit "B" attached to plaintiffs' complaint.

(2-b) The items described were not incorporated in hull #20 during the construction by Peter Petersen under the contract of May 14, 1941.

(2-c) During August, 1941, all the property described in Exhibit "B" of plaintiffs' complaint was sold by Henry Stakset of Tacoma, Washington.

(2-d) During August, 1941, all the property described in Exhibit "B" of plaintiffs' complaint was sold by Henry Stakset of Tacoma, Washington, for Four Thousand and 00/100 (\$4,000.00) Dollars.

(2-e) That some of the property described in Exhibit "B" of plaintiffs' complaint was used and second hand property at [28] the time it was sold by Henry Stakset in August, 1941, and some of the property was new.

(2-f) The agreement of May 14, 1941, is

the agreement under which hull #20 was constructed.

(2-g) The performance of the contract of May 14, 1941, did not require Hanney to acquire any of the property described in Exhibit "B".

(2-h) Performance of the contract of May 14, 1941, did not require Hanney to provide for use in the construction of hull #20 any of the property described in Exhibit "B".

/signed/ C. E. H. MALOY

Attorney for Plaintiffs

United States of America

State of Washington

County of King—ss:

C. E. H. Maloy, being first duly sworn, on oath deposes and says:

That he is the attorney for the plaintiffs above named; that the plaintiffs are at the present time absent from King County, State of Washington, and, therefore, he makes this verification on their behalf; that he has read the foregoing statement in response to request for admissions, knows the contents thereof, and believes the same to be true.

/signed/ C. E. H. MALOY

Subscribed and sworn to before me this 10th day of October, 1944.

(seal) /signed/ RAY C. MOLITER

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Copy received Oct. 11.

HAYDEN, MERRITT, SUM-
MERS & STAFFORD
Attorneys.

[Endorsed]: Filed Oct. 12, 1944. [29]

Title of District Court and Cause.

DEFENDANT'S SECOND AMENDED AN-
SWER TO PLAINTIFFS' AMENDED
COMPLAINT

Comes now the defendant above named and here-
by makes its Second Amended Answer to the first
cause of action in the Amended Complaint of the
plaintiffs above named, to-wit:

I.

As to paragraph IV of such first cause of action,
(1) the defendant denies that the property listed
and described by Exhibit B was covered in whole or
in part by the insurance policy of which Exhibit
A is a copy; (2) the defendant (in harmony with
admissions made and filed in behalf of the plaintiffs
herein) denies that the property listed and described
by Exhibit B was in whole or in part property
stored by the plaintiffs for the purpose of being
attached to or used upon Halibut Boat Hull No.
20 in the building or construction thereof, or was
property belonging to or destined for the building
or construction of Halibut Boat Hull No. 20; and
(3) the defendant denies that the property listed

and described by Exhibit B was at the time lost by fire of the value of \$14,160.14.

II.

As to paragraph V of such first cause of action, the defendant denies that there is due or owing to the plaintiffs from the defendant the sum of \$14,160.14, or any lesser sum.

Wherefore, having fully answered, the defendant prays that the above entitled action be dismissed and that the defendant have judgment for its costs and disbursements herein.

HAYDEN, MERRITT SUM-
MERS & STAFFORD
LANE SUMMERS
MATTHEW STAFFORD

Attorneys for Defendant

Plaintiffs hereby consent to the filing of the above.
Dated Oct. 25, 1944.

C. E. H. MALOY

Attorney for Plaintiffs

[Endorsed]: Filed Oct. 28, 1944. [30]

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT UNDER RULE 56

Comes now the defendant and moves for summary judgment dismissing the above entitled action with prejudice and with costs and disbursements

to be taxed in favor of the defendant and against the plaintiffs upon the ground that there is no genuine issue as to any material fact (except as to the amount of damages) and that the defendant is entitled to such judgment as a matter of law.

This motion is based upon the record herein including the first cause of action in the plaintiffs' amended complaint, the second amended answer of the defendant, the depositions, the defendant's "request for Admissions under Rule 36" and the plaintiffs' "Statement in Response to Request for Admissions under Rule 36".

HAYDEN, MERRITT SUM-
MERS & STAFFORD
MATTHEW STAFFORD
LANE SUMMERS

Copy received 10/27/44.

C. E. H. MALOY

[Endorsed]: Filed Oct. 27, 1944. [31]

In the United States District Court for the Western
District of Washington, Northern Division

Court Room No. 1, Hon. John C. Bowen, Presiding.
Tuesday, October 31, 1944.

[Title of Cause.]

No. 718

DEPOSITIONS PUBLISHED
MOTION FOR SUMMARY JUDGMENT
DENIED

Now on this 31st day of October, 1944, this cause comes on before the Court for hearing on the motion of the defendant for summary judgment. Attorney C. E. H. Maloy appears for the plaintiffs, and attorneys Lane Summers and Matthew Stafford appear for the defendant. By stipulation [32] of counsel, the depositions of Henry Stakset and Kenneth H. Wheelock are ordered published. A memorandum supporting the defendant's motion is filed. The motion is argued and denied.

(Journal No. 33 Page 762) [33]

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

The above entitled matter by consent of plaintiffs and defendant having duly and regularly come on for hearing before the above entitled court, the

undersigned Judge presiding, at 10 A.M. on the 31st day of October, 1944, prior to trial in said action, upon the defendant's motion for summary judgment under Rule 56, and arguments supporting and opposing said motion having been made and considered by the Court, and the Court being fully advised;

Now, therefore, in conformity with oral ruling made at the time of such hearing, it is hereby Ordered that said motion be, and the same hereby is, denied.

Exception made by the defendant to such ruling and to the foregoing order is hereby noted and allowed.

Done in open court this 31st day of Oct., 1944.

JOHN C. BOWEN

U. S. District Judge

Approved as to form:

.....

Attorney for Plaintiffs

Presented by:

LANE SUMMERS

Of attorneys for Defendant

[Endorsed]: Filed Oct. 31, 1944. [34]

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 718

OLUF B. HANNEY, HANS MIKELSEN, and
PAUL VOHL,

Plaintiffs,

vs.

THE FRANKLIN FIRE INSURANCE CO. OF
PHILADELPHIA, PENNSYLVANIA, a cor-
poration,

Defendant.

Be It Remembered: That on Wednesday, Octo-
ber 18, 1944, pursuant to Stipulation For Taking
Deposition hereto annexed, at the offices of Messrs.
McCutchen, Thomas, Matthew, Griffith & Greene,
in the Balfour Building, in the City and County of
San Francisco, State of California, personally ap-
peared before me, Frank L. Owen, a Notary Public
in and for the City and County of San Francisco,
State of California, duly commissioned and sworn
to administer oaths, et cetera, Henry Stakset, a
witness called on behalf of the defendant.

John J. Whelan, Esq., representing Messrs.
Derby, Sharp, Quinby & Tweedt, appeared as coun-
sel on behalf of the plaintiffs, and Russell A. Mac-
key, Esq., representing Messrs. McCutchen, Thomas,
Matthew, Griffiths & Greene, appeared as counsel
for defendant, and the said witness, having been
by me first duly cautioned and sworn to testify the

truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the counsel for the respective parties that the deposition of the [35] above-named witness may be taken at the offices of Messrs. McCutchen, Thomas, Matthew, Griffiths & Greene, in the Balfour Building, in the City and County of San Francisco, State of California, on Wednesday, October 18, 1944, before Frank L. Owen, a Notary Public in and for the City and County of San Francisco, State of California, and in shorthand by Kenneth G. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all objections as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.)

HENRY STAKSET,

called as a witness on behalf of defendant, having been first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

Mr. Mackey: Q. Mr. Stakset, your name is Henry Stakset, is it? A. That's right.

Q. What is your business? A. Fishing.

Q. Fishing business? A. Yes.

Q. Where do you live?

A. I live in Tacoma.

Q. Tacoma, Washington? A. Yes.

Q. Are you about to go to sea?

A. Yes, I figure to go out tomorrow. [36]

Q. How long have you been in the fishing business? A. Oh, since I was sixteen.

Q. Have you lived up around the Puget Sound most of your life?

A. No. I lived there about, pretty near twenty-three years now.

Q. Do you remember selling some equipment belonging to a fishing boat to Oluf Hanney and Hans Mikelsen? A. Yes.

Q. When did you sell it to these men?

A. That was in 1941, the fall.

Q. The fall of 1941? A. Yes.

Q. At the time of the sale you made a list of the equipment that was being sold? A. Yes.

Mr. Mackey: Mr. Whelan, I haven't that list. You sent me over a copy of the list this morning,

(Deposition of Henry Stakset.)

and I wonder if I could use that for identification at the present time?

Mr. Whelan: Certainly.

Mr. Mackey: Q. Mr. Whelan has handed me a typewritten list, here, of equipment which apparently bears your signature on each page. I show it to you. Do you recognize your signature on those pages?

A. Yes, that is my signature, all right.

Q. On the second page, too? A. Yes.

Q. Is that the equipment that you sold these two men?

A. Yes. Do you want me to read it over?

Q. Yes. A. That is the list, yes.

Q. How much did you sell that equipment for to these two men, Hans Mikelsen and Oluf Hanney?

A. \$4000.

Q. Where was it at the time it was sold?

A. It was in a locker in the Fishermen's Dock, there, in Seattle.

Q. Is that the Salmon Bay Terminal?

A. Yes.

Q. You had stored it there, had you?

A. Yes.

Q. How long had it been in storage?

A. Oh, when they bought it [37] it was about six or seven months.

Q. That would be, then, in the spring of 1941 that you put it in storage? A. Yes.

Q. Why did you put it in storage?

(Deposition of Henry Stakset.)

A. Well, we didn't use it then, and it had to be taken care of, salt it down and hang up the lines so it will keep.

Q. Had you had it on a boat? A. Yes.

Q. You had a boat, and you took it off the boat? A. Yes.

Q. What was the name of your boat?

A. Midnight Sun.

Q. Did you own that boat?

A. I owned part of it, yes.

Q. How old was the boat; when was the boat built? A. In 1937.

Q. 1937? A. Yes.

Q. Had you been fishing with that boat from 1937 until the time you took it off and stored it?

A. Yes; every winter down here, every season down here.

Q. That is, down outside of San Francisco Bay?

A. Yes.

Q. What is the fishing season outside of San Francisco Bay?

A. Well, start here in August or September, and last for up to February of next year.

Q. What kind of fishing was that?

A. Sardine fishing.

Q. Did you fish during that season which began in September, 1937?

A. Not at the beginning. The boat was not quite ready and we start in the later part of September or first of October.

Q. Of 1937? A. Yes.

(Deposition of Henry Stakset.)

Q. At the end of the season, in February, 1938, you went back to Tacoma? A. Yes.

Q. Then did you fish in the season which began in September of 1938? A. Yes.

Q. Then returned to Tacoma in February of 1939? A. Yes.

Q. Did you fish in the season beginning September, 1939?

A. Yes, [38] not at the beginning, probably the later part of September.

Q. The latter part of September? A. Yes.

Q. And then went back in February of 1940?

A. Yes.

Q. Did you fish in the season beginning in September, 1940? A. Yes.

Q. 1940? A. 1940, yes.

Q. Did you go back to Tacoma in, say, February, 1941? A. Yes.

Q. That is when you put this gear that was sold in storage? A. Yes.

Q. Did you fish in 1941? A. No.

Q. From this boat? A. No.

Q. What happened to your boat?

A. The Government took it; sold it to the Government.

Q. The Government requisitioned your boat, did it? A. Well, it took it.

Q. What did you do with your boat between these fishing seasons that you described?

A. Chartered it out in the summer time.

Q. Chartered it out? A. Yes.

(Deposition of Henry Stakset.)

Q. Did you charter it out each summer?

A. I don't remember. I chartered them out two summers.

Q. Two summers?

A. Yes; I remember two summers.

Q. Do you remember where your boat was built?

A. At Tacoma Boatbuilding Company, Tacoma.

Q. The boat was delivered to you about August of 1937, was it?

A. Yes, the later part of August.

Q. Did you outfit the boat for fishing that season, yourself?

A. Yes.

Q. When you first outfitted the boat, did you have equipment on the boat substantially what is shown here on this list?

A. Well, just about the same, yes.

Q. Just about the same?

A. Just about the same, yes, a little [39] more later on, I guess.

Q. A little more later on?

A. Yes.

Q. I will draw your attention to this entry of 175 Montara bags and rubber; did you have those on board the first season, 1937?

A. No, not the full amount there.

Q. You had some?

A. Yes.

Q. When did you get the rest of the bags?

A. I don't know; in 1938 and 1939.

Q. 1938 and '39?

A. Yes.

Q. What are those bags made of?

A. Well, the inside is rubber and outside is covered with canvas.

(Deposition of Henry Stakset.)

Q. What are they used for? A. Floats.

Q. Used for floats? A. Yes.

Q. Do they help with the corks? A. Yes.

Q. To keep the seine afloat? A. Yes.

Q. From year to year you replenished those items, that equipment, from time to time?

A. Yes.

Q. What I am getting at is, the first year you had substantially the same equipment on board as is shown by that list, with the exception of the Montara bags? A. Yes.

Q. The Montara bags, you got some more, some additional ones, more than you had the first year, and you got those in 1938 and 1939? A. Yes.

Q. Were there any other things that you added subsequent to 1937 besides the Montara bags; I mean additional equipment that was just not replacements?

A. Well, replaced it, I put a little more—got the seine a little deeper, a little bit longer.

Q. And how much additional seine do you think you put on?

A. About, probably 20 percent.

Q. Probably 20 percent. Each year you went out fishing and before you went out and during the season you would buy replacements as they were necessary, would you? A. Yes. [40]

Q. Where did you make those purchases in 1937?

A. I bought most of the seine and corks and leads from Lindgren.

(Deposition of Henry Stakset.)

Q. Was that up in Seattle?

A. In Seattle, yes.

Q. Was the seine of American manufacture that you bought from Lindgren?

A. No, it was Japanese web.

Q. Japanese web? A. Yes.

Q. Is that as good as American web?

A. No, it is not as good as American web.

Q. Where did you buy the other stuff that you outfitted your boat with?

A. Later on I bought from Pacific Marine, Norby Supply Company, and Seattle Ship Supply Company, in Seattle.

Q. All those concerns are in Seattle?

A. Yes.

Q. Did you buy from those concerns the first year, in 1937?

A. I might have bought a little.

Q. Most of the stuff you bought the first year from Lindgren? A. Yes.

Q. The following years, as you needed replacements you bought from these other concerns up there? A. Yes.

Q. When you are down in San Francisco during the fishing season, when you were down here, did you buy anything in San Francisco?

A. Yes, I bought from Cincotta Bros.

Q. The stuff you bought from Cincotta Bros. was replacement, and so on? A. Yes.

Q. How much did the original outfit cost; I don't mean the boat, I mean the original outfit of seines,

(Deposition of Henry Stakset.)

and corks, and leads, and gear that is comparable to this that is on the list, here.

A. Well, I cannot say exactly, but the first year it cost around eight thousand, I guess.

Q. About eight thousand? A. Yes.

Q. You much did your boat cost, do you remember? Or, how much did your total investment amount to? A. About \$43,000. [41]

Q. \$43,000. A. Yes.

Q. How much did your boat cost?

A. I believe it was around \$36,000.

Q. \$36,000? A. Or \$35,000.

Q. \$35,000 or \$36,000? A. Yes.

Q. So your seines and nets and your corks and the rest of the equipment cost in the neighborhood of seven or eight thousand dollars? A. Yes.

Q. You used this boat and its equipment every season from 1937 to 1940, inclusive?

A. Yes, that's right.

Q. Did you make any large purchases of equipment after the original season of 1937?

A. Well, the Japanese web wasn't very good. In 1938 and 1939 I bought quite a bit replacements.

Q. Of netting? A. Netting, yes.

Q. You would not buy it all in one year, though?

A. No.

Q. You bought some in 1937 and some in 1938?

A. 1938 and 1939.

Q. 1939 and 1939, and the last purchases you made in the way of replacements were during the season of the fall of 1940? A. Yes.

(Deposition of Henry Stakset.)

Q. When you store this equipment what means are used to preserve it during storage?

A. Well, the netting is salted down, use about eight or nine tons of salt on the webbing; the lines and corks we hang up to dry.

Q. Do you salt it down with a salt brine?

A. No.

Q. I mean the webbing.

A. No. Haul it through a salt brine.

Q. Salt brine?

A. Cover it with salt, you can't see the webbing.

Q. How long do you think the netting will keep salted down that way?

A. Well, I haven't tried, but in one year I don't think it would do any damage for one year.

Q. That depends on whether or not it is covered with salt and brine? A. Yes. [42]

Q. If you have dry spots in it, what happens then?

A. Well, probably it gets hard, you see, and break out there where there is no salt.

Q. How long was the life of the nets that you were using from 1937 to 1940?

A. Well, all the time, if you take care of it, say about four or five years.

Q. Then it is gone? A. Yes.

Q. And you have to replace? A. Yes.

Q. I notice on this list some mattresses, were those part of the original purchase? A. Yes.

Q. That is the original year of 1937, mattresses?

A. Yes.

(Deposition of Henry Stakset.)

Q. Can you identify anything on that list that I have handed you and which you have identified yourself, can you pick out any of the things there that were new as late as 1940?

A. There is one item here, 350 fathoms.

Q. Of what?

A. $\frac{5}{8}$ galvanized purse wire.

Q. That was bought in 1940? A. Yes.

Q. Can you pick out anything else that was bought as late as 1940?

A. There is a strip of netting here, I don't know if it was bought in 1940, but it wasn't used.

Q. What is that?

A. That is 160 fathoms of $1\frac{3}{8}$, 9-thread 400 mesh.

Q. That is netting? A. Yes.

Q. That had never been used? A. No.

Q. Is that the item where on that line the pencil notation, "New" is after it?

A. Yes, I think so.

Q. Is that your handwriting, do you know?

A. I can't tell.

Q. Do you recognize any other item on that list that was new in 1940?

A. Well, I can't remember; there are so many things here that I can't remember.

Q. You don't recognize anything more on there that was new as [43] late as 1940?

A. No, not on that list, there.

Mr. Mackey: With your permission, I will offer this list in evidence so we can use it.

(Deposition of Henry Stakset.)

Mr. Whelan: All right.

(The list was marked Defendant's Stakset Exhibit 1.)

Mr. Mackey: How big was the Midnight Sun?

A. Over all, she was 78 feet long.

Q. Is that what you call one of the big boats in the fishing business?

A. Yes. Not the biggest, but one of the big ones.

Q. What percentage do you think of the big boats, that is, the size of the Midnight Sun, did the Government take when they requisitioned your boat, or about that time?

A. Well, I can't tell that.

Q. Do you think they took one-half of them?

A. No, not her equipment.

Q. Those that were in operation had already their equipment, didn't they?

A. Those that were in operation had, yes.

Q. And the gear that you sold, covered by this Stakset Exhibit 1, you didn't have any sale for it, except to somebody who had a new boat?

A. Well, I think we could sell it to the other boats, too; it was hard to get webbing at that time, and they were around asking for webs; it was hard to get webbing at that time.

Q. Could you sell all of it to one buyer or would you have to sell it piecemeal?

A. Well, they asked for pieces but we want to sell nothing except the whole thing.

(Deposition of Henry Stakset.)

Q. They were mainly interested in the netting?

A. Yes.

Q. In your opinion, what was the second-hand value of this equipment that you sold and that is represented by Stakset Exhibit 1, at the time of the sale?

A. Second-hand, it was worth about seven or eight thousand dollars second-hand.

Q. You sold it for \$4000. A. Yes.

Mr. Mackey: That is all. [44]

Cross Examination

Mr. Whelan: Q. Mr. Stakset, how old are you?

A. 37.

Q. Did I understand you to say you have been a fisherman since the time you were 16?

A. Yes.

Q. Have you ever owned any other fishing vessels besides the Midnight Sun?

A. Not in this country.

Q. Where did you own them?

A. In Norway.

Q. How many vessels did you own?

A. I had a part in two.

Q. Were they vessels the same size as the Midnight Sun? A. A little smaller.

Q. Were you the master and skipper of those?

A. No, I was not skipper there.

Q. How long did you own these other vessels?

A. The first one I had for two years.

Q. In what year was that?

A. That was in 1917 and 1918.

(Deposition of Henry Stakset.)

Q. 1917 and '18?

A. Yes. The other one I had in 1919 to 1923, when I left.

Q. You were familiar with the fishing gear and other equipment on these vessels? A. Yes.

Q. You saw the fishing gear and equipment on these vessels? A. Yes.

Q. What year was the fishing vessel *Midnight Sun* built? A. In 1937.

Q. You bought it the same year?

A. Yes. It was ready the later part of August or September.

Q. Did I understand you to say it was built at Tacoma Shipping Company?

A. Tacoma Boatbuilding Company.

Q. Did you have other partners?

A. Yes; we were nine other partners.

Q. What part of the year 1941 did the United States take the fishing vessel, the *Midnight Sun*?

A. That was in the spring.

Q. At the time the United States took your fishing vessel, [45] how much did it pay you and your partners?

Mr. Mackey: I object to that on the ground it is incompetent, irrelevant, and immaterial; the value of this equipment is what we are concerned with, not with the earnings.

Mr. Whelan: I still want to get the answer.

The Witness: Shall I answer?

Mr. Whelan: Yes.

The Witness: A. \$42,400, I think.

(Deposition of Henry Stakset.)

Mr. Whelan: Q. That amount did not cover the gear or other fishing equipment on the vessel, did it? A. No.

Mr. Mackey: Will you read that question and answer, please?

(Record read.)

Mr. Whelan: What I am trying to bring out is, I did not want confusion between the sale of the fishing vessel and the equipment. I want the record to show they were both distinct. That was my point.

Mr. Mackey: Yes.

Mr. Whelan: Q. Mr. Stakset, do you recall what part of the year 1941 you sold the gear of the vessel *Midnight Sun*?

A. It was in August or September.

Q. You sold it to Mr. Mikelsen and to Mr. Hanney? A. Yes.

Q. How much did you receive for the fishing gear at that time? A. \$4000.

Mr. Mackey: That is the gear on this list, here?

Mr. Whelan: That's right.

The Witness: A. Yes.

Mr. Whelan: Q. This gear had been stowed in locker 325 at the Salmon Bay Terminal at the port of Seattle?

A. Yes, that was the number.

Q. At the time of the sale you had a key to this locker? [46]

A. The watchman on the dock had a key in his office there.

(Deposition of Henry Stakset.)

Q. Did you have that key transferred over to Mr. Mikelsen?

A. Yes, I told him to get the key from the watchman when he needed it.

Q. You were very anxious to dispose of this fishing gear, weren't you?

Mr. Mackey: I object to that as incompetent, irrelevant, and immaterial. The sale was effected.

The Witness: Well, I couldn't get another boat. I figured it might get lost, it wouldn't do it any good laying that way for any length of time, and I would like to sell it, yes.

Q. You knew at that time, prior to the sale of this fishing boat that you would be unable to get another fishing boat, didn't you? A. Yes.

Q. You also knew you would be unable at the particular time, due to shortage of material, to build another fishing boat? A. Yes.

Q. How many discussions did you have with Mr. Mikelsen and Mr. Hanney prior to the sale of this fishing gear? A. I can't remember that.

Q. Was there one, or several conversations?

A. Several, I guess.

Q. At these discussions you knew that they wanted this particular gear that they were buying from you, that is, the gear on the list that we have already identified, and which has been admitted as Stakset Exhibit No. 1, for another fishing vessel which Mikelsen and Hanney were building in Tacoma, didn't you? A. Yes.

(Deposition of Henry Stakset.)

Q. The amount of \$4000 which you received from Mr. Mikelsen and his partner did not represent the true value of this fishing gear at the time you sold it in August, 1941? [47]

Mr. Mackey: I object to that on the ground the sale is the best evidence of the value.

Mr. Whelan: I think he testified before when you asked him the second-hand value——

Mr. Mackey: The sale represents the best evidence of value. I still object.

Mr. Whelan: Will you answer that question?

The Witness: No. It was worth more than we got for it.

Q. Well, it was due to the fact you couldn't——

A. I couldn't get a boat, so it was better to get some money for it or it probably would spoil.

Q. Now, referring to this cotton netting or webbing that is set forth on this list that you have already examined, Mr. Stakset, you say that this netting was bought at the time that you got the vessel in 1937; is that correct?

A. What did you say?

Mr. Whelan: Will you read the question, please?

(Question read)

A. No; very little of that netting on the list was bought in 1937.

Q. Was the original netting Japanese netting?

A. Yes, the first one was.

Q. Whom did you buy it from?

A. John Lindgren.

Q. How long did this netting last?

(Deposition of Henry Stakset.)

A. The first one?

Q. Yes, the first one.

A. We didn't use much of it the second year. We used probably only half if it the second year.

Q. But you had to start making replacements of that netting, didn't you? A. Yes.

Q. You made those replacements in 1938 and 1939? A. Yes.

Q. What was the price of the netting at that time, during 1938 and 1939 when you were buying this netting? [48]

A. It was around 80 cents a pound.

Q. From whom did you buy the new netting?

A. I bought most of it from Pacific Marine and then I bought some from Norby and some from Seattle Ship Supply.

Q. Did you buy any of it from Cincotta Bros.?

A. Yes, down here.

Q. This new webbing was replaced and repaired from time to time during 1938, 1939 and 1940, wasn't it? A. Yes.

Q. Did you use tar or other materials to keep this webbing in first class condition?

A. Yes, used tar, coal tar.

Q. How often was it tarred to keep it in good condition?

A. Put it on once when it was new.

Q. Did you put it on at regular periods of time when you finished fishing?

Mr. Mackey: I object to that on the ground he

(Deposition of Henry Stakset.)

put it on once when it was new. He has already testified that is when he put it on.

Mr. Whelan: I want to know if he put it on afterward, though.

Mr. Mackey: He said he put it on once when it was new.

The Witness: When it was new, yes, that's right.

Mr. Whelan: Q. After a year's period elapsed did you put any tar or any other material on this webbing to keep it in first class condition?

A. Tried once what they call net dip; that's about the same as coal tar.

Q. Did you put any tar on it during the year 1940 after your fishing season?

A. That I can't remember.

Q. Did you put it on prior to your fishing season?

A. I put once on; I think it was 1939 I put some on.

Q. But at all times from the time of the purchase in 1938 and 1939 you kept this webbing in first-class condition of repair or replacement?

A. Yes. [49]

Q. How much time did you put in repairing this webbing?

A. The whole crew was working on the gear; I can't say the hours.

Q. Did you put in several hours a day?

A. To hang the seine up took about ten or twelve days, twelve men.

(Deposition of Henry Stakset.)

Q. How many barrels of tar did you use each year on this webbing?

Mr. Mackey: I object to that on the ground he has already testified he only tarred it once and he used some sort of a dip one other year.

Mr. Whelan: Q. How many barrels of tar did you use the first time?

A. About ten or twelve barrels of tar for the full seine.

Q. Do you know, Mr. Stakset, what the price of webbing was in the year 1940?

Mr. Mackey: I object to that on the ground it is incompetent, irrelevant, and immaterial, and no proper foundation is shown.

Mr. Whelan: Q. On this list, Mr. Stakset, there is mention of a lifeboat; was this part of the original gear of the Midnight Sun? A. Yes.

Q. And between the years 1937 and 1939 did this lifeboat become battered?

A. Yes, it got smashed up.

Q. Did you fix this lifeboat by putting in new planks and new sides? A. Yes.

Q. Did you paint it at that time?

A. Well, we put linseed oil on it.

Q. Was the lifeboat kept in good condition?

A. Yes, it was just as good as new.

Q. Did you put linseed oil on it each year after that? A. Yes, every year. [50]

Q. So in 1941, August, at the time you sold the fishing gear and other equipment to Mikelsen, this lifeboat was in first-class condition, wasn't it?

(Deposition of Henry Stakset.)

A. Yes.

Q. Mr. Stakset, I believe you have testified that several items on this list, including 350 fathoms of 5/8 galvanized purse wire was brand new; is that correct?

A. That is correct.

Q. Is it also correct that that wire had never been used?

A. That is correct.

Q. And you have also testified that 160 fathoms of 1-3/8 9-thread netting was also brand new, is that correct?

A. That is correct.

Mr. Mackey: For identification, may we have it indicated that that is the fourth item from the end of that list, Stakset Exhibit 1, fourth from the end on the last page, the one that has "new" marked after it?

Mr. Whelan: Yes, that's right.

Q. There is also listed on these two sheets which have been identified and marked as Stakset Exhibit No. 1 Manila rope; isn't it correct that this manila rope was brand new and only had been in the water a few times?

Mr. Mackey: Just a minute. What item are you referring to?

Mr. Whelan: I am referring to a great deal of rope on these sheets, there are quite a few.

Mr. Mackey: All of it?

Mr. Whelan: Yes.

Mr. Mackey: All of the Manila rope?

The Witness: A. Well, most of it was new, yes, but not all of it.

Mr. Whelan: Q. Not all of it?

A. No.

(Deposition of Henry Stakset.)

Q. Manila rope was very hard to obtain in 1941, wasn't it? A. Yes, it was hard to get. [51]

Q. There is also listed here one large purse drum and one small purse drum. When were these bought?

A. When I bought them new?

Q. When you bought them new. Were they replaced at any time? A. No.

Q. Were they kept in first-class condition?

A. Yes. They are wire, they last for years.

Q. Did you paint them?

A. Yes, paint them every year.

Q. Every year. There is also listed on this list anchor shackles. These were bought at the same time the vessel was built?

A. I can't say that, I don't remember that.

Q. Do you know when they were bought?

A. No, I don't remember that.

Q. At the head of this list is mentioned some 6500 6-inch Sel. Corks. Where were these bought?

A. Bought most of them the first year from Lindgren.

Q. Did you replace them? A. Yes.

Q. How many were replaced?

A. That I can't tell. When they broke we replaced them.

Q. You kept these corks in first class condition?

A. Yes; we dried them every year.

Mr. Mackey: Q. Dried them every year?

A. Yes.

(Deposition of Henry Stakset.)

Mr. Whelan: Q. Cork was unobtainable in 1941, wasn't it?

Mr. Mackey: I object to that on the ground no proper foundation is laid for it.

Mr. Whelan: Q. In 1937, when you purchased these corks, did you have any trouble buying them?

A. 1937?

Q. 1937. A. They were hard to get.

Q. It was hard to get in 1937? A. Yes.

Q. The same condition existed in 1938 and 1939?

A. Yes. [52]

Q. The same condition in 1940 and 1941?

A. Yes.

Q. These corks were in first-class condition, though, at the time of the sale to Mikelsen in August, 1941?

A. Yes, they were as good as you could get them. They had been used.

Q. There is mention on this list, Mr. Stakset, of wood blocks. Were they part of the original equipment of the vessel?

A. Most of them; broke probably a couple of them.

Q. And replaced them from time to time, is that correct? A. Yes.

Q. Do you know the last time you replaced them?

A. No. One broke down there, I can't remember the year.

Q. Do you know if it was 1939 or 1940?

A. It was 1939.

(Deposition of Henry Stakset.)

Q. When you sold the fishing gear and equipment to Mikelsen and his partner, you and your partners received \$4000? A. Yes.

Q. That is correct, isn't it?

A. That is correct.

Q. You are still familiar with the value of fishing equipment, aren't you? A. Yes.

Q. Where are you now working, Mr. Stakset?

A. My own boat, the North Sea.

Q. You are master of that vessel?

A. Yes.

Q. How large a vessel is that?

A. 63-1/2 feet.

Q. Since August, 1941, have you been working on fishing vessels? A. Yes.

Q. You have handled the fishing gear and other equipment on these various fishing boats?

A. Yes.

Q. Have you done any repairs on these fishing gear and equipment on these other vessels?

A. Yes.

Q. Have you replaced any equipment and fishing gear on these vessels?

A. On my own boat I replaced the gear.

Q. Do you know in October, 1944, the value of fishing gear and equipment? A. Yes. [53]

Q. You knew in August, 1941, the value of your fishing gear, didn't you? A. Yes.

Q. What was the value of your fishing gear in February, 1942, if you know?

(Deposition of Henry Stakset.)

Mr. Mackey: I object to that on the ground the proper foundation has not been laid; also the question calls for evidence that is incompetent, irrelevant and immaterial.

The Witness: New gear will cost——

Mr. Mackey: I object to any answer as to the cost of new gear. It is admitted the gear was not new.

Mr. Whelan: I am not asking him about new gear. I want to know if he knows what the value of his fishing gear was in February, 1942.

The Witness: February, 1942. In February, 1942——

Mr. Whelan: Pardon me. Before you answer, Mr. Stakset, I will say he has testified that he knows the value of fishing gear as of today; he testified he knew the value of his fishing gear in August, 1941, I want to know if he knew the value of his fishing gear in February, 1942.

Mr. Mackey: That is not the question. You asked him what was the value.

Mr. Whelan: Will you read the question, please?
(Question read by the reporter)

Mr. Mackey: If that is the question I still object that the proper foundation has not been laid. The witness has not qualified, but I want to expressly object to any testimony as to the cost new which this witness started to say.

Mr. Whelan: Q. I want to know, Mr. Stakset, if you knew the value of fishing gear in February, 1942. A. Yes.

(Deposition of Henry Stakset.)

Q. You knew the value of your fishing gear in February, 1942, isn't that correct? A. Yes.

[54]

Q. What was the value of your fishing gear in February, 1942?

Mr. Mackey: I still object on the ground it is too general and the proper foundation has not been laid.

The Witness: A. About nine or ten thousand dollars.

Mr. Whelan: Q. Mr. Stakset, you testified that you used your boat from 1937 to 1940, inclusive.

A. Correct.

Q. During the years 1938 and 1939 you made large purchases of webbing; isn't that correct?

A. Yes, that is correct.

Mr. Mackey: I object and move to strike out the answer. He said he made purchases.

Mr. Whelan: Q. Did you make large purchases of webbing in the years 1938 and 1939?

A. Yes, quite a bit in 1938 and 1939.

Q. 1940 was the last replacement that you made; is that correct? A. That is correct.

Q. You have also testified that your original outfit cost about \$8000; is that correct?

Mr. Mackey: He said seven to eight thousand.

Mr. Whelan: Q. Seven to eight thousand dollars? A. The fishing gear, yes.

Q. Had the price of fishing gear gone up from the time you first made your purchase of this gear in 1937 to 1941?

(Deposition of Henry Stakset.)

Mr. Mackey: I object to that question on the ground the proper foundation has not been laid, and it is not proper cross-examination. If you want to ask that particular question of him as an expert you will have to make him your own witness.

Mr. Whelan: Q. What is the life of this netting or webbing?

A. Well, that all depends on how it is taken care of.

Q. If it is taken very good care of?

A. It will last four or five years.

Q. You tarred this webbing several times during the last — [55]

Mr. Mackey: Just a moment. Not several times. I object to your putting words into the testimony. He said he tarred it once when he first started, and dipped it once more.

A. That's right.

Mr. Whelan: Q. You salted the webbing down, is that correct? A. Correct.

Q. What year was that done?

A. We salted every year. The last time I came in we salted it again.

Q. Where was that, in Tacoma?

A. In Seattle.

Q. That was in the spring, February of 1941; is that correct? A. That is correct.

Q. Did I understand you to say, Mr. Stakset, that you chartered your boat out during the summer? A. In the summer time.

(Deposition of Henry Stakset.)

Q. How long did that charter generally run?

A. Oh, from four to five months.

Q. Did you go over and repair your equipment after the vessel had been chartered out?

A. I repaired the vessel, yes.

Q. What replacements did you buy from Cincotta Brothers here in San Francisco?

A. I bought webbing and rope.

Q. You bought webbing and rope?

A. Yes.

Q. Anything else?

A. I can't remember exactly.

Q. Did you buy your wood blocks from him?

A. One or two.

Q. Did you buy any of the rubber buoys?

A. Might have bought big round ones, I think we got them from Cincotta.

Q. Do you know when these were bought?

A. No, I don't remember; 1938, I think.

Q. You have testified as to bags of rubber, I believe it is these Montara bags, 175, which were bought some time in 1938 or 1939.

Mr. Mackey: No; part in 1937 and the rest in 1938, he said.

Mr. Whelan: 1938. [56]

Q. Did you ever replace any of these bags?

A. A few of them got busted.

Q. Do you know what it cost you to replace them?

A. No; \$5 apiece, I think. I believe so, I am not sure.

(Deposition of Henry Stakset.)

Mr. Whelan: I have no more questions.

Redirect Examination

Mr. Mackey: Q. Mr. Stakset, I have here a list of materials on the letterhead of Cincotta Brothers, dated October 13, 1944, and identified at the top as "Purchases made by the M/S Midnight Sun during the year 1940. Will you look at that list?

Mr. Whelan: I am going to object to that on the ground it is too remote.

Mr. Mackey: Q. Will you look at that list and see if that will refresh your recollection as to the purchases that you made from Cincotta Brothers in 1940?

A. That is pretty hard to remember.

Q. Do you know Mr. Ernst down there at Cincotta Brothers? A. The timekeeper?

Q. Yes. A. Yes.

Q. You saw that list down there yesterday when we were talking it over with—you and I with Mr. Ernst? A. Yes.

Q. Will that refresh your recollection as to the purchases that you made down at that place in 1940?

A. I cannot remember that.

Q. Would you look over that last and see if you remember any purchases that you made at Cincotta's that is not on that list; I mean purchases made in 1940.

A. I can't remember all those small things.

Mr. Whelan: May I see that?

Mr. Mackey: Yes, certainly. [57]

(Deposition of Henry Stakset.)

Q. Your purchases from Cincotta Brothers were only things that you happened to find that you would need during the fishing season after you got down here, weren't they? A. Yes.

Q. Will you look at that list and see if that fairly represents about the type of thing and the amount of purchases you would make from Cincotta Brothers in a season?

Mr. Whelan: Objection. The witness has testified he can't remember.

The Witness: I can't tell exactly.

Mr. Mackey: Q. I am trying to get you to tell me whether that fairly represents about the type of thing that you would purchase from Cincotta Brothers during the season down here

A. Well——

Q. I don't mean to say that you have to purchase each one of those items, but does that fairly represent what you purchased?

A. Some years may buy more than others; if you happen to tear a seine or anything you buy more than in other years. There are lots of small things there.

Q. Well, you bought lots of small things of that sort, didn't you, from Cincotta Brothers from time to time?

A. When we need them we buy them, yes.

Q. Doesn't that represent about the type of thing you would buy from them?

A. Well, it must be. I can't remember all those things there.

(Deposition of Henry Stakset.)

Q. Tell me whether that is about the type of thing that you would go in there and buy.

A. Well, that is the type of thing, but some years you buy quite a bit.

Q. I appreciate that. I wouldn't try to get you to say that exactly represents what you bought, but is that about the kind of thing, the kind of purchase that you would normally make down there?

A. Well, some of it, yes. [58]

Q. Well, is there anything on there that you would not normally buy?

A. Well, when you need it you buy it. I can't tell what is——

Q. Well, can you refresh yourself on these items of September 25 1940, under that group, totaling \$3.46?

A. Yes.

Q. You would sometimes buy that kind of thing at Cincotta Brothers during the season?

A. Yes.

Q. Then for September 29, 1940, I see items of marine glue, patches, tape, a 6-inch purse block, and some galvanized screws and boat nails, totaling \$9.01; you would normally buy that kind of thing?

A. Yes.

Q. Wouldn't you, when you came down here?

A. Yes.

Q. The same type of thing occurred on September 1st, October 1st, rather, totaling \$6.32; that is about the type of thing?

A. Yes.

Q. Some flashlight batteries and Manila rope on October 21st, totaling \$7.25. October 24th I see

(Deposition of Henry Stakset.)

16 pounds of 3-1/2 inch 3-strand bolt rope, 69 pounds of 54 by 1-1/2 by 200 netting, 58 cents a pound, total for that day being \$47.38. That is a fairly large purchase for that day.

A. Yes. That is a brailer.

Q. Yes that is a brailer. On October 28th, diaphragm pump washer, \$2.22. This, generally, represents the kind of thing you would be buying there?

A. Yes, small things.

Q. And I see here on November 11 you purchased 149 pounds of 16-fathoms 15-thread 1-3/8 by 400 netting 6400 mesh.

A. Yes.

Q. 74 cents a pound; \$136.15 being the purchase on that day. Does that fairly represent about the kind of things you would be buying?

A. Yes, sir.

Q. I call your attention to the fact that the total for the 1940 purchases, including January of that year, was \$440. Is that about what it would run?

A. I can't remember. [59]

Mr. Whelan: May I see that list?

Mr. Mackey: I offer that list in evidence, not as proof of actual purchases made, but in connection with this witness' testimony as to the general type of things that he was buying at Cincotta Brothers.

Mr. Whelan: I object to the introduction of this in evidence due to the fact the witness has testified he cannot remember anything with regard to that list; further, on the ground it is too remote from the time of the sale.

(Deposition of Henry Stakset.)

Mr. Mackey: I ask that it nevertheless be marked as an exhibit.

(The document was marked Defendant's Stakset Exhibit 2.)

Recross Examination

Mr. Whelan: Q. Mr. Stakset, when you start out on a fishing trip you usually start from Tacoma?

A. Seattle.

Q. At that time you usually make all the purchases and replacements of equipment before you start out? A. Yes.

Q. Whom do you usually buy your equipment from at that time?

A. Oh, the stores up in Seattle, there.

Q. Would that be the Pacific Marine Supply Company? A. Yes.

Q. Norby Supply Company?

A. Yes, and Seattle Ship Supply.

Q. When you go into Cincotta Brothers that is just for small things; isn't that right?

A. That is when you are fishing.

Q. You are just going in and making purchases of what you actually need; isn't that correct?

A. That is correct.

Q. And all the equipment that you need, including netting, has already been purchased before you start out on your fishing trip? A. Yes.

Q. So if you make any purchases of netting from Cincotta Brothers it is either for the purpose of repairs or for replacement at [60] that time between fishing trips into San Francisco and then out again?

(Deposition of Henry Stakset.)

A. That is correct.

Mr. Whelan: That is all.

Further Redirect Examination

Mr. Mackey: Q. The price that you paid for netting varied according to the number of threads in the netting, and the mesh, didn't it?

A. Yes.

Q. So you cannot say that all netting is so much a pound? A. No.

Q. I believe you testified a little while ago this netting was so much a pound, but I don't know what netting you had in mind; I don't know how much you said——

A. It all depends what year it was.

Q. And also on the netting?

A. The netting, yes.

Mr. Whelan: I think he testified that in 1938, at the time he was making his purchase of netting for replacement, that he paid 80 cents per pound.

Mr. Mackey: Q. What netting did you have in mind?

A. That was the netting for the seine, 1-3/8 inches.

Q. How many pounds?

A. Just a few cents difference, I think.

Q. What thread netting did you have in mind at 80 cents? A. 9-thread.

Q. 1-3/8 inches. A. Yes.

Q. Is that the 400 mesh? A. Yes.

Q. Now, there is one item that I overlooked asking you about, and I don't understand it. I see on

(Deposition of Henry Stakset.)

this list, Stakset Exhibit No. 1, some pen boards. It is the seventh item from the bottom on the first page of his Stakset Exhibit No. 1. What are your pen boards?

A. We use pen boards in the hold to keep the fish from sliding, and sometimes I guess you would call it [61] drain boards; that is to keep the fish from not going over the side.

Q. What are they, just planks?

A. Yes, planks.

Q. What are the sizes of the planks?

A. Well, about 2-1/4 by 12.

Q. 2-1/4 by 12 inches; how long?

A. Well, that is according to the length of the hold in the boat.

Q. Those pen boards used in the hold run fore-and-aft on your boat? A. Yes.

Q. They divide the hold in half?

A. Yes.

Q. How long was your hold?

A. About 38 feet.

Q. 38 feet? A. Yes.

Q. Would your pen boards be that long, or would you have to use two or three boards?

A. Have to use two or three.

Q. Two or three lengths.

A. And extensions between.

Q. Do you think these pen boards would be 12 feet long? A. Some of them, yes.

Q. Some are purchased like that?

A. Yes.

(Deposition of Henry Stakset.)

Q. Any of them longer than that?

A. No, not longer.

Q. How high were the pen boards in the middle of the ship?

A. About seven or eight feet.

Q. So what that was was 2 by 12 planks?

A. Yes.

Q. Is that rough surface?

A. No, that is planed and painted.

Q. Planed and painted? A. Yes.

Q. And 2 by 12 planks laid on edge so as to go up seven or eight feet, and so as to go the length of a hold, about 38 feet? A. Yes.

Q. Now, would you call those pen boards or—

A. Well, we call them deck planks, too; sometimes call them pen boards, and sometimes call them deck planks. [62]

Q. The same kind of boards.

A. We had 2-3/4 inches thick by 12.

Q. 2-3/4 by 12? A. Yes.

Q. You use those along the railing on a ship?

A. Yes.

Q. About how many of those would you have on deck?

A. We had four lengthwise and about six crosswise.

Q. Those would be 2-1/4 inches thick, 12 inches wide, and about 12 feet long?

A. Well, the boat was 20 feet across; say 16 feet lengthways.

(Deposition of Henry Stakset.)

Q. I am trying to get about how many boards there would be 12 feet long; about how many boards would there be if they are on the boat 12 feet long?

A. I would have to figure that out. About eight or ten boards, I guess, on the deck.

Q. What were these, fir boards?

A. Yes.

Q. Where is Mr. Hanney now, do you know?

A. He is in Monterey.

Q. Have you seen him since you have been down here?

A. Yes.

Q. Where is Mr. Mikelsen?

A. He is in San Francisco, here.

Q. Is he with you now on the same boat?

A. No, he is fishing on his own boat.

Q. Have you seen him?

A. Yes, I saw him once.

Q. Was that Mr. Mikelsen down there at Cincotta's the other day when I was down there?

A. I saw him the same day, but I don't know if he was there.

Q. How long have you known him?

A. Oh, I know him since 1937, I think.

Q. I called with you about a month ago, didn't I?

A. Yes.

Q. Then I talked with you again yesterday?

A. Yes.

Q. You have talked with Mr. Whelan here about this case, haven't you?

A. Yes. [63]

Q. That was yesterday?

A. Yes.

(Deposition of Henry Stakset.)

Q. When did you come in to San Francisco this last trip? A. It was Friday we came here.

Q. When did you talk to Mr. Whelan?

A. That was yesterday morning.

Q. You did not call me, though, did you?

A. No; I was so busy I don't know who to call first.

Mr. Mackey: That's all. [64]

State of California,

City and County of San Francisco—ss.

I certify that, in pursuance of Stipulation for taking Deposition hereto annexed, on Wednesday, October 18, 1944, before me, Frank L. Owen, a Notary Public in and for the City and County of San Francisco, State of California, at the offices of Messrs. McCutchen, Thomas, Matthew, Griffith & Greene, in the Balfour Building, in the City and County of San Francisco, State of California, personally appeared Henry Stakset, a witness called on behalf of the defendant in the cause entitled in the caption hereof: and John J. Whelan, Esq., representing Messrs. Derby, Sharp, Quinby & Tweedt, appeared as counsel on behalf of the plaintiffs, and Russell A. Mackey, Esq., representing Messrs. McCutchen, Thomas, Matthew, Griffiths & Greene, appeared as counsel for defendant; and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and

(Deposition of Henry Stakset.)

said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Kenneth G. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of mailing the same with my own hands to the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, the court for which the same was taken.

(Introduced during the taking of said deposition, referred to and specified therein, and annexed hereto are Defendant's [65] Stakset Exhibits 1 and 2.)

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in my office aforesaid this 21st day of October, 1944.

[Seal] FRANK L. OWEN

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 26, 1944.

[Endorsed]: Published Oct. 31, 1944. [66]

(Deposition of Henry Stakset.)

DEFENDANT'S EXHIBIT No. 1

6500	6" Sel. Corks
260 fthm	3" —4 strand Bolt Rope
65	4" Brass Rings
200 fthm	2¼" —4 Strand Purse Rope
175	Montara Bags and Rubber
14	C.J.H. 16" Rubber Bouys
40 fthm	3½" 4 strand Bolt Rope
20	3" Galv. Rings
120 fthm	3½" Manilla rope
1	Strip 300 fthoms 1⅜-21 th 20 M.D. Cotton netting
1	Strip 300 fthoms 1⅜ 12th 400 M.D. Cotton netting
4	Strip 300 fthoms 1⅜ 9th 400 M.D. Cotton netting
1	Strip 300 fthoms 54th 6" Mesh Cotton netting
11	Sq. Bunk Mattresses
11	Vest Life Preserves
50 fthm	3¾" Manila Rope
50 fthm	3½" Manila Rope
1	Large purse drum
1	Small purse drum
2	1" Galv. Screw Anchor shackles
2	⅞" Galv. Screw Anchor shackles
2	7" 21-C Galv. Wood blocks
2	7" 22-C Galv. Wood blocks
50 fthm	2½" Manila Rope
1	5 Gal. garbage can
80	½x6 galv. purse rings

(Deposition of Henry Stakset.)

2	1" galv. Screw anchor shackle
2	1" galv. side hooks
1	8" Galv. Cleat
2	Bendir Hoops
4000	4 oz. $\frac{5}{8}$ " leads
175 fthm	$4\frac{1}{2}$ " Manila rope
1	10'x10' No. 6 Brailer canvas
2	200 mesh x 200 mesh $1\frac{3}{8}$ " mesh 54th cotton netting
4	Brailer handles
10 tons	$\frac{3}{4}$ H. G. Salt
4	No. 2 scoop shovels
1	Oak davit
1	200 fthm 400 mesh $1\frac{3}{8}$ " meshes 6th cotton netting
1	Submarine light & cord
1	Strip 30 fthm $1\frac{3}{8}$ —18th 400 mesh D. cotton netting
1	Strip 30 fthm $1\frac{3}{8}$ —18th 400 mesh D. cotton netting [67]
1	Strip 30 fthm $1\frac{3}{8}$ —15th 400 mesh D. cotton netting
1	Life boat
2 pr.	10 ft. Ash oars
2 pr.	#3 galv oar locks
200 fthm	$4\frac{1}{2}$ manila rope
4	$1\frac{1}{2}$ " Galv. open turnbuckles J. H.
350 fthm	$\frac{5}{8}$ " Galv. purse wire
4	15 fthm 5" Manila rope
	Pan boards
1	12" Galv. 22-C Com Dble wood blocks
2	12" Galv. 21-C Com single wood blocks

(Deposition of Henry Stakset.)

2	10" Galv. 22-C Com Dble wood blocks
2	10" Galv. 21-C Com single wood blocks
1	10" Galv. Block
50 fthm	5/8" galv. 6/24 purse wire
40 ft.	2" Rubber Deck Hose
1	2" Brass hose nozzle
4	Deck Scrubs and handle
2	12 qt heavy galv buckets
1	strip 160 fthm 13/8 9th 400 M. D. Cotton netting new
2	Hand Made purse blocks
2	Unloading brailers
1	10" Cargo block

HENRY STAKSET [68]

DEFENDANT'S EXHIBIT No. 2

CINCOTTA BROTHERS

Marine Hardware

Fishing Supplies

169 Jefferson Street

Telephone PRospect 8977

San Francisco, California

October 13, 1944

Purchases made by the M/S Midnight Sun during the year 1940

Itemized January purchases not available, amounted to \$ 108.58

Sept. 25, 1940 Inv. #5788

1—1/8 to 1/4 brass reducer .....	.15
1—1/8 to cl brass nipple .....	.11
2—7/8 galv. shackles 1.40 ea.....	2.80
1—1/4 female hose coupling .....	.30

3.36

Sales tax..... .10

3.46

(Deposition of Henry Stakset.)

Purchases made by the Midnight Sun in 1940—(Continued)			
Sept. 29, 1940 Inv. #5684			
1 dz. 2 x 14 galv. screws.....	.15		
1 tube marine glue .....	.40		
1 can tube patches .....	.25		
1 friction tape .....	.30		
1 6" galv. purse block	7.35		
1 dz. 2½ x 14 galv. screws.....	.15		
1# 31/2" boat nails .....	.15		
	8.75		
Sales tax.....	.26	9.01	
Oct. 1, 1940 Inv. #5808			
1—3" galv. tee	3.40 ea. 40%	2.04	
1—3 x el. galv. nipple.....	.80 ea. 40%	.48	
1—3" galv. cap	1.56 ea. 40%	.94	
17½" 3" galv. pipe threaded.....		1.90	
1—1 x 4 galv. machine bolt.....		.30	
1—3 x el galv. nipple.....	.80 ea. 40%	.48	
	6.14		
Sales tax.....	.18	6.32	
Oct. 15, 1940 Inv. #6605			
1—1 x 3½ bolt .....	.35		
Sales tax.....	.01	.36	
Oct. 21, 1940 Inv. #6465			
28#—3½" manila rope .23#	6.44		
6—flashlight batteries .10 ea. ....	.60		
	7.04		
Sales tax.....	.21	7.25	
Oct. 24, 1940 Inv. #6632			
16#—3½" - 3 strand bolt rope .29#.....	4.64		
69#—54 x 1½ x 200 netting .58#.....	40.02		
Sales tax.....	1.34		
tanning 69# netting .02#.....	1.38	47.38	

(Deposition of Henry Stakset.)

Purchases made by the Midnight Sun in 1940—(Continued)

Oct. 28, 1940 Inv. #8075

1—#3 diaphragm pump washer.....	2.15	
Sales tax.....	.07	2.22

Oct. 30, 1940 Inv. #8020

2 sets Hartman cutouts 1.50 ea.....	3.00	
Sales tax.....	.06	

1½ hrs. electrician 1.75 per hour.....	2.63	5.69
--	------	------

Oct. 30, 1940 Inv. #8136

3½# 7/16 manila rope .24#.....	.84	
35# bluestone .08#	2.80	

	3.64	
Sales tax.....	.11	3.75

Oct. 19, 1940 Inv. #6435

1 piece galv. tin 13" x 30".....	.65	
Sales tax.....	.02	.67

Nov. 1, 1940 Inv. #8356

8 yards cocoa matting 1.00 yd.....	8.00	
8 hemmings .50 ea.	4.00	
1 deck brush only .....	.50	

	12.50	
Sales tax.....	.38	12.88

Nov. 6, 1940 Inv. #8385

35#—3½" manila rope .23#.....	8.05	
159#—4" - 4 std. bolt rope .29#.....	46.11	

	54.16	
Sales tax.....	1.63	55.79

(Deposition of Henry Stakset.)

Purchases made by the Midnight Sun in 1940—(Continued)
 November 11, 1940 Inv. #10581

149#—16 fathoms 15 thread 1 $\frac{3}{8}$ x400		
netting .74#	110.26	
$\frac{3}{4}$ barrel cold dip 26.00 barr.....	19.50	
	<hr/>	
	129.76	
Sales Tax	3.89	
Tarring	2.50	136.15
	<hr/>	

November 18, 1940 Inv. #10746

1—8" sounding lead .15 $\frac{1}{2}$ #.....	1.24	
1— $\frac{1}{2}$ x 3 $\frac{1}{2}$ machine bolt .....	.07	
1—Boatend connection	1.75	
	<hr/>	
	3.06	
Sales tax.....	.09	3.15
	<hr/>	

November 18, 1940 Inv. 10810

1—3 x cl galv. nipple .80 ea. 40%.....	.48	
Sales tax.....	.02	.50
	<hr/>	

November 20, 1940 Inv. 10820

2—foam charges 1.00 ea.....	2.00	
Sales tax.....	.06	2.06
	<hr/>	

November 26, 1940 Inv. 7537

39#—3 $\frac{3}{4}$ " manila rope .23#.....	8.97	
1—14 foot ash oar .52 ft.....	7.28	
1—30" sea anchor	5.15	
	<hr/>	
	21.40	
Sales tax.....	.64	22.04
	<hr/>	

November 27, 1940 Inv. 8217

1—fuel oil regulator (Ingle range 116).....	2.75	
Sales tax.....	.08	2.83
	<hr/>	

December 5, 1940 Inv. 7787

1—Glover leaf grinding compound.....	.60	
Sales tax.....	.02	.62
	<hr/>	

(Deposition of Henry Stakset.)

Purchases made by the Midnight Sun in 1940—(Continued)

December 6, 1940 Inv. #7958

1—package Turco .....	.45	
Sales tax.....	.01	.46

December 6, 1940 Inv. #8503

3 flashlight batteries .10 ea.....	.30	
1 flashlight glove .....	.10	
1 3/16 galv. shackle .....	.28	
	.68	
Sales tax.....	.02	.70

December 23, 1940 Inv. #8710

14 ft. 1½" - belata belting and lacing.....	7.90	
Sales tax.....	.24	8.14

\$ 440.01

[Title of District Court and Cause.]

Be It Remembered, that the Deposition of Kenneth H. Wheelock, called as a witness on behalf of Plaintiffs, was taken on the 4th day of August, 1944, beginning at the hour of 2:30 o'clock p.m., at 990 Dexter Horton Building, Seattle, King County, Washington, pursuant to Notice and Subpoena Duces Tecum duly and regularly served, and Oral Stipulation between counsel, before W. J. Lauckhart, a Notary Public.

C. E. H. Maloy, Esq. appearing as counsel for and on behalf of Plaintiffs;

Matthew Stafford, Esq., (Of Hayden, Merritt, Summers & Stafford) appearing as counsel for and on behalf of the Defendant;

Whereupon, the witness being by the Notary first duly sworn, was then and there examined and testified as hereinafter set out, to-wit:

KENNETH H. WHEELOCK,

a witness called on behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows: [73]

Direct Examination

By Mr. Maloy:

Q. Your name is Kenneth H. Wheelock?

A. Yes, sir.

Q. In August of 1941 and prior thereto, you were associated with Chester J. Chastek & Co., Insurance Building, Seattle?

A. That is correct.

Q. In what capacity were you associated with that concern at that time?

A. I was vice-president of the company.

Q. And what were your duties particularly as to managing the company and so forth?

A. I was in effect the Manager due to Mr. Chastek's absence on active duty with the Navy. I believe that I am correct that he was called into service in February of 1941.

Q. And you ever since have been connected with Chester J. Chastek & Co.—and its successor, what do you call it now?

A. Chastek & Wheelock, Inc.

Q. And you are still acting as such manager of that corporation?

A. Yes, sir.

(Deposition of Kenneth H. Wheelock.)

Q. In the late spring of 1941 you wrote some insurance, both a surety bond and a builder's risk policy, for Mr. Oluf B. Hanney and Mr. Peterson of the Marine View Boatbuilding Company of Tacoma?

A. That is correct.

Q. And I believe under date of August 20, 1941, you wrote a builder's risk policy covering Hull No. 20 for those parties?

A. The effective date of the policy was August 20, 1941, to November 20, 1941.

Q. With whom did you have your dealings in connection with the writing of that policy known as the builder's risk [74] policy No. —

A. No. 44298.

Q. That is the original policy and the endorsement of the builder's risk policy, Form No. 50?

A. As amended.

Q. As amended; yes.

A. January, 1939.

Q. With whom did you have your dealings?

A. My original contract you mean?

Q. Yes.

A. It was with Mr. Hanney through Attorney H. O. Landon.

Q. Herbert Landon?

A. That is correct.

Q. He referred Mr. Hanney to you; is that the idea? Or did he refer you to Mr. Hanney?

A. He phoned me at the time that he was completing this contract for Mr. Hanney—

Mr. Stafford: Wait a minute. By "this contract", what do you mean, Mr. Wheelock?

A. The contract for the building of the boat

(Deposition of Kenneth H. Wheelock.)

between Mr. Hanney and the Marine View Boat-building Company.

Q. (By Mr. Maloy): They phoned you; all right.

A. At which time I went to his office and there I met Mr. Hanney for the first time.

Q. You met him at that time particularly pertaining to the surety bond?

A. For the purpose of discussing the furnishing of a performance bond.

Q. A surety bond.

A. A surety bond.

Q. Now then, later I presume when you discovered that [75] Mr. Peterson was going to build a boat for Mr. Hanney known as the Hull No. 20, that you solicited the Builder's risk insurance?

A. From Mr. Hanney.

Q. Yes; from Mr. Hanney?

A. Yes; that is correct.

Q. All right. Did you solicit from Mr. Peterson at all?

A. Yes. No; I will change that if I may. I talked with Mr. Peterson on perhaps three or four occasions. The business, however,—I am now referring to the builder's risk—

Q. Yes.

A. —was ordered and authorized by Mr. Hanney in accordance with the terms of his contract with Mr. Peterson.

Q. That he was to furnish it?

A. That he was to pay for it.

Q. That he was to pay for it. All right.

(Deposition of Kenneth H. Wheelock.)

Mr. Stafford: Do you have any objection, Mr. Maloy, if I ask the witness to identify that contract again? You mean the construction contract?

A. The construction contract between Mr. Peterson and Mr. Hanney.

Q. (By Mr. Maloy) Then your negotiations were with Mr. Hanney then concerning the supplying for Mr. Hanney and Mr. Peterson a builder's risk insurance policy? A. Yes, sir.

Q. And that culminated or resulted in you writing the policy that is involved in this lawsuit, builder's risk Form 50 as amended January, 1939?

A. That is correct.

Q. When did you actually write the policy?

A. Well, I couldn't give you the date that I actually wrote [76] the policy. I didn't write the policy as a matter of fact. The policy was written by the Company, in the Company office of the Franklin Fire Insurance Company.

Q. It was written there? A. Yes, sir.

Q. And then delivered to you?

A. And then delivered to me.

Q. And then you signed it on behalf of the Franklin Fire Insurance Company as its agent?

A. That is correct. At which time the correspondence will show that Mr. Hanney was notified by letter requesting that he furnish us with a correct address in order that we might mail the policy to him.

Q. Prior to the time that the policy was written by the Franklin Fire Insurance Company, had

(Deposition of Kenneth H. Wheelock.)

you had the policy in your possession that was to be written and which was finally delivered to Mr. Hanney?

A. Would you mind repeating that question?

Q. I will restate it. Before you actually wrote or signed the builder's risk policy here involved, had you the policy in your possession and had you discussed its terms with Mr. Hanney?

A. Well, I couldn't have had the policy in my possession before it was written.

Q. Did you have a form or a copy of the policy which you discussed with Mr. Hanney?

A. It is quite likely that I did have. I wouldn't say under oath that I did, but it is quite likely that I did have. There had been some discussion as to the coverage, particularly that pertaining to the engine.

Q. Well, let me ask you this. Before you delivered the policy [77] to Mr. Hanney, had you discussed with Mr. Hanney the terms of builder's risk Form No. 50 amended in January, 1939?

A. I am very positive that I had.

Q. Before the builder's risk policy was issued and delivered to Mr. Hanney did you have Mr. Hanney fill out any application for such insurance, written application?

A. Not that I recall, nor do I have any record of any such application. You are speaking now of builder's risk?

Q. Oh, yes. I am confining it to that.

(Deposition of Kenneth H. Wheelock.)

Before delivering the builder's risk insurance policy to him, you knew that Peterson was building the boat for him and that he was the owner.

A. That is correct.

Q. Now, did you make any inquiries of Mr. Hanney before you delivered the insurance, the builder's risk policy, to him, as to whether anybody else was interested with him in the boat?

A. No; I made no inquiries.

Q. Did he volunteer at any time to you before the builder's risk policy was delivered to you, that any other parties were or might be interested in the building of the boat?

A. I am of the opinion that any reference made to any other interested parties was some time after the issuance of the policy.

Q. Can you place the time when it was first referred to, Mr. Wheelock?

A. No, sir; I couldn't.

Q. Do you think it might have been about the time that the policy was first extended which would be on or about November 20, 1941? Does that refresh your recollection at all?

A. I wouldn't dare to say. [78]

Q. Well, the fact remains that some time after the issuance of the builder's risk policy in August, 1941, he did direct your attention to the fact that others were interested with him in the building of the boat?

A. Yes; merely to the extent that they were in-

(Deposition of Kenneth H. Wheelock.)

terested. In what manner I am not aware even today.

Q. Yes. Did he not tell you that Mr. Hans Mikelsen and Mr. Paul Vohl were interested with him in the building of the boat?

A. Well, may I put it this way? That there was mention made by him of the fact that there were other parties interested with him but at no time did he indicate to me that their interest in the construction of this boat necessitated any change in either the surety bond or the builder's risk policy.

Q. Yes. He did mention the fact, did he not, Mr. Wheelock, that Mr. Mikelsen and Mr. Vohl were interested with him in putting up the money for the construction of the boat?

A. Whatever their arrangements were, I do not know.

Q. But he did tell you that, did he not?

A. That is correct; at some time.

Q. He told you that at some time?

A. I know that it wasn't prior to the issuance of the policy. Else I would have gone into it further.

Q. Did you say it was some time in the late fall of 1941?

A. It could have been. It could have been in the late fall, Mr. Maloy, or it could have been in the early spring. I frankly could not recall.

Q. Did Mr. Hanney come to your office from time to time in regard to this policy or the extension of it?

A. He was in my office from time to time when he would get into town. I couldn't say how many

(Deposition of Kenneth H. Wheelock.)

times. [79]

Q. How are the extensions handled? After November 20th they were every thirty days. How were they handled? Did you just automatically renew it from time to time? A. That is correct.

Q. That was the understanding, was it?

A. Yes.

Q. That you should renew it from time to time until the vessel was completed?

A. That is correct.

Q. And he should notify you when the engine was placed upon the ground or in the vessel?

A. Mr. Peterson was to notify me and I also had an arrangement with the Washington Iron Works so that there would be no slip-up that they would likewise notify me on the date of shipment.

Q. Now, when Mr. Hanney came to your office, do you remember an occasion in the fall of 1941, about November 20, when Mr. Mikelsen was with him?

A. One of those two gentlemen were with him. I think it was Mr. Mikelsen.

Q. A big husky blond fellow?

A. That's right.

Q. And do you recall of Mr. Mikelsen coming in another time later about a month or so, coming in in February of 1942, and paying \$75.00 an account of premium? Was that Mr. Mikelsen that came in and paid that at that time?

A. I recall that Mr. Mikelsen did come in and

(Deposition of Kenneth H. Wheelock.)

make one payment. I would not want to say which one it was.

Q. That was made in currency, was it not?

A. No; everything according to our records was by check.

Q. Then he gave you a \$75.00 check then, you think? [80]

A. We had one check. I don't know whether it was endorsed to us or not, but it was a Nordby Supply Company check.

Q. Was that the \$111.00, the first payment made on 8/20/41? A. No; it wasn't.

Q. That was paid in currency, was it not?

A. No, sir; that was paid according to my records all by check.

Q. You think one of those two checks, the \$111.00 or the \$75.00 check, was a Nordby Supply Company check and then endorsed by either Hanney or Mikelsen to you?

A. Yes; I think so. The payments were always made in order and promptly.

Q. I believe you stated a few moments ago, Mr. Wheelock, that you had discussed with Mr. Hanney the builder's risk policy Form No. 50 amended 1939. When was that?

A. Well, it was discussed at various times as any policy will be. It was discussed prior to the issuance of the policy and it was discussed following the delivery of the policy, right after the delivery of the policy, I should say, within a short space of time.

(Deposition of Kenneth H. Wheelock.)

Q. The endorsements placed on the policy covering the extensions were discussed with Mr. Hanney, or Mr. Mikelsen and Mr. Vohl also, were they?

A. I do not believe so except to the extent of making certain that they would be automatically extended even though they should be absent and there was a discussion relative to not covering the launching hazard. An endorsement had been issued—if I may refer to the dates? Is that permissible?

Q. Surely.

A. (Resuming) An endorsement was issued on December 23, 1941, extending the policy to cover launching and trial trips. That policy was cancelled—— [81]

Q. The endorsement you mean?

A. The endorsement; pardon me. That endorsement was cancelled without charge on February 25, 1942, granting a return premium of \$22.50 which was the charge for the original endorsement.

Q. And is that the same day that another endorsement was placed on or attached to the policy extending it from February 20th to March 20th—or 22nd, 1942? A. From February you say?

Q. Yes; from February to March?

A. That was the same day, February 25th.

Q. In other words, the endorsement covering the extension and extending the insurance from February 20, 1942, to March 22, 1942, substituted and took the place of the one that you are just speaking of; is that it?

(Deposition of Kenneth H. Wheelock.)

A. Yes; I believe that that is correct.

Q. Now, Mr. Wheelock, was there any discussion between you and Mr. Hanney when the insurance was taken out concerning Mr. Hanney and his associates purchasing tackle, apparel, appurtenances, materials, furniture, fixtures and so forth, which they were going to store in Seattle?

A. No; I don't have any recollection of any conversation of that nature. There was at one time a discussion as I recall it pertaining particularly to the engine. There were questions asked relative to the builder's risk policy at which time I endeavored to explain to them the policy contract and what a builder's risk policy constituted and what it was intended to cover.

Q. Did you read to them the policy?

A. I read to them one section of the policy.

Q. Which section of the policy did you read?

A. As I remember—and as I recall this was again primarily [82] in connection with the engine—I read them,—shall I read the section?

Q. Yes; you might read it.

A. This one right here.

Q. You might read it.

A. (Reading) "This insurance is also to cover all risks including fire while under construction and/or fitting out, including materials in buildings, work shops, yards and docks of the assured, or on quays, pontoons, craft, and all risk while in transit to and from the works and/or the vessel wherever she may be lying; also all risks of loss or dam-

(Deposition of Kenneth H. Wheelock.)

age through collapse of supports or ways from any cause whatever and all risks of launching and breakage of the ways.”

Now that was read for the purpose of endeavoring to show Mr. Hanney the coverage afforded by the Builder’s risk policy in connection with his contract for the building of the hull.

Q. Did you read to him at any time any other clause or provision of the policy for the purpose of enlightening him on what his coverage was?

A. Yes; there was another clause, if I can find it, in connection,—I believe the question was if the engine should be dropped while swinging from the dock to the hull.

Q. But only pertaining to the engine?

A. Yes.

Q. Well, did you read to him any other clauses than those two that you have sepecified?

A. No; not to my best knowledge, because, as I recall it,—see, this is quite a little while ago—and as I recall [83] it, those were the principal things in which he was interested and they tended to explain to him the nature of the coverage afforded.

Q. Now, was this explanation of these two clauses that you have referred to made after he had received the policy from you?

A. The question in connection with the dropping of the engine I am very sure was after he had received the policy.

Q. As I understand it, he didn’t receive the policy until some little time after it was actually

(Deposition of Kenneth H. Wheelock.)
signed and issued by the Franklin Fire Insurance Company?

A. That could have been possible because we had to await his mailing address.

Q. You didn't know exactly where he was or where to send it to him?

A. That's right. We sent a letter to him at the last address we had in Seattle although we believed at that time that he was in Alaska.

Q. Now, up to that time, though, up to the time that you made the explanation of the two clauses we have just referred to, you had not made any explanation to him of any other clause or provision in the policy further than to tell him that generally he was covered?

A. Not other than the general coverage afforded under the policy.

Q. Now did he tell you at any time at that time that Mr. Mikelsen and Mr. Vohl were interested with him in the bulding of the boat and in all the materials they were sending for the purpose of placing upon the boat?

A. Well, at some time he told me that he had these two other men [84] interested financially, but with no further explanation.

Q. In August while you were talking to him, August of 1941, when you were discussing the matters with him and prior to the issuance of the policy, did he make any reference to you that he was negotiating with a man named Henry Stakset in Tacoma relative to purchasing a large amount of equip-

(Deposition of Kenneth H. Wheelock.)

ment—seine nets and rope and block and tackle and other stuff of that kind, that he was going to use on this boat? A. No; never.

Q. You don't recall anything of that character?

A. No; I don't.

Q. Do you recall Mr. Hanney or Mr. Mikelsen or Mr. Vohl discussing that with you prior to the time that the policy was issued?

A. There was at no time any discussion pertaining to any nets or equipment of that nature.

Q. At any time with any of them?

A. Not with any of them.

Q. At any time during all the course of these renewals or anything of that kind?

A. That is correct. I have no knowledge of that.

Q. Then I presume consequently that you have no recollection either of their having discussed with you as to the fact that they were going to store that stuff here in the City of Seattle?

A. No; the only thing that I can recall in connection with any discussion concerning coverage outside of Tacoma was in connection with the material to be used in this hull, and: would it be covered, for example, if it was held over in transit somewhere prior to getting into the yard?

Q. And what did you tell them about that? [85]

A. And I told them that it was covered in transit according to the policy terms.

Q. I see. Now, I believe you have made a search for the correspondence which you had with Mr.

(Deposition of Kenneth H. Wheelock.)

Hanney? By the way, you kept this account in Mr. Hanney's name? A. In both names.

Q. In Mr. Hanney's and Mr. Peterson's names?

A. Yes.

Q. On your records with your correspondence with either Mr. Peterson or Mr. Hanney?

A. That is correct.

Q. You have had a search made for any and all correspondence that you had with either one of them? A. Yes, sir.

Q. Pertaining to this builder's risk policy?

A. Yes; we looked all this week and dug up everything that was there.

Q. I see. And this bundle of letters that you have here are the only ones that you can find concerning the matter?

A. That is correct, and I do not believe that I ever received any correspondence from Mr. Hanney at any time. It was generally by personal call when he was in the city.

Mr. Malloy: I see. Now will you mark these, Mr. Notary? I would like to have them marked all as one exhibit so we will have them accounted for.

(Whereupon a group of papers were attached together and by the Notary marked as Plaintiff's Exhibit "1" to this disposition)

Q. (By Mr. Maloy) I will hand you plaintiffs' exhibit 1 and ask you if this is all the correspondence that you as Chester J. Chastek and Co. or Chastek & Wheelock, Inc., have had with Mr. Hanney or Mr.

(Deposition of Kenneth H. Wheelock.)

Peterson concerning this builder's risk [86] policy that we are discussing?

A. This is everything that we have located in our files.

Mr. Maloy: I will offer this exhibit 1 in evidence as part of the deposition.

Mr. Stafford: Why do you offer it?

Mr. Maloy: Just for the purpose of showing the facts; with whom the parties were dealing and with whom he had his correspondence.

Mr. Stafford: (Examining proposed exhibit) I object immediately to the introduction in evidence at the time of taking this deposition to correspondence between Chastek and the Franklin Fire Insurance Company in connection with it, which correspondence is included here. I may be mistaken but I don't think the subpoena calls for that.

Mr. Maloy: If there is one of those letters, you may eliminate it.

Mr. Stafford: The very first letter is one from Chastek to the Franklin Fire Insurance Company.

Mr. Maloy: Eliminate any correspondence between Chastek and Co. and Franklin Fire Insurance Company.

The Witness: I brought everything there was.

Mr. Maloy: I assumed that it was all between Hanney and you or you and Hanney—and Peterson.

Mr. Stafford: I have no objection to the others.

Mr. Maloy: All right. We will have it marked

(Deposition of Kenneth H. Wheelock.)

over again because the identifying mark was placed on this first letter which we are eliminating.

(Whereupon the group of letters constituting Exhibit 1 was remarked as Plaintiffs' Exhibit 1 for identification, eliminating the first letter of the group as heretofore marked.) [87]

Q. Now the ledger account of Chastek & Co. was kept in the name of Peterson and Hanney?

A. (Reading) "Peter Peterson doing business as Marine View Boatbuilding Company, Tacoma, Washington, and Oluf B. Hanney, owner, Seattle, Washington."

Q. That's right. As a matter of fact, the purpose of the builder's risk policy was to insure the builder and the owner, was it not?

A. That is correct, for the construction of the hull.

Q. As their interest might appear?

A. There were policies written in both names. The builder's risk policy, Franklin Fire Insurance Company policy No. 44298, was written in the name of both the builder and the owner.

Q. And the builder's risk policy also?

A. That is the builder's risk policy.

Q. Oh, is it? A. Yes, sir.

Q. And you are referring also to the rider in the form of a builder's risk Form No. 50, are you not?

A. Well, it constitutes the policy, is a part of the policy.

Q. Yes; written in the name of both; and the

(Deposition of Kenneth H. Wheelock.)

purpose of it was to cover the interest of Peterson, the builder, and the interest of the owner?

A. That is correct.

Q. Your daily report you are requested to bring in the subpoena is I take it the duplicate or copy of the Policy No. 44298, together with the attachment, the form builder's risk No. 50 amended, and the endorsements thereon?

A. That is correct.

Q. That is what makes up your daily report?

[88]

A. Yes, sir; that is our record and a copy of the builder's risk policy.

Mr. Maloy: That is all.

Mr. Stafford: Mr. Maloy, this exhibit that you had marked, maybe I didn't understand thoroughly but I didn't understand that you offered it in evidence.

Mr. Maloy: Yes; I offered it in evidence.

Mr. Stafford: Well, we started out here rather quickly and informally without any stipulation as to objections.

Mr. Maloy: You can object to it.

Mr. Stafford: What I would prefer to do in view of the number of papers constituting the exhibit, I would prefer to reserve my objection until the time of trial.

Mr. Maloy: That is all right. I have no objection to that.

Mr. Stafford: Is that all?

Mr. Maloy: Yes.

(Deposition of Kenneth H. Wheelock.)

Mr. Stafford: I have no questions.

(Conclusion)

(sgd) KENNETH H. WHEELOCK

Deposing Witness.

Subscribed and sworn to before me this 10th day of August, 1944.

[Seal] W. J. LAUCKHART

Notary Public in and for the State of Washington,
residing at Seattle. [89]

CERTIFICATE

State of Washington

County of King—ss.

I Hereby Certify, that the deposition of Kenneth H. Wheelock, a witness called on behalf of Plaintiffs, was taken on the 4th day of August, 1944, beginning at the hour of 2:30 p.m., at 990 Dexter Horton Building, Seattle, King County, Washington, pursuant to Notice, Subpoena duces tecum, and Oral Stipulation between counsel for a continuance from the date set in the Subpoena to this day, before me, W. J. Lauckhart, a Notary Public in and for the State of Washington, residing at Seattle.

That the said witness, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and being examined, deposed and said as in the foregoing deposition set out.

That the taking of this deposition was begun on the 4th day of August, 1944, and was completed on the same day.

I certify that the examination of the witness comprising this deposition was by me personally recorded by stenograph notes from the witness and in his presence, and was thereafter reduced to type-writing under my personal direction.

I certify that this deposition was thereafter carefully read over by the said witness and that he signed the same in my presence.

I certify that plaintiffs' exhibit 1, the packet of correspondence as produced by the witness, was so marked by me for identification and is returned herewith.

Lastly, I certify that I am not of counsel, nor am I related to either or any of the parties, nor am I interested [90] in the event of the cause; that this deposition, together with exhibit 1 attached, has been retained by me for the purpose of sealing up and directing the same to the clerk of the court, then and there to remain under my seal until opened in court, as required by law.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 11th day of August, 1944.

[Seal] W. J. LAUCKHART

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Oct. 23, 1944.

[Endorsed]: Published Oct. 31, 1944. [91]

PLAINTIFF'S EXHIBIT No. 1 OF
DEPOSITION OF WHEELOCK

Kenneth H. Wheelock, Executive Vice President.
Chester J. Chastek, President.

(Copy)

STATEMENT

Chester J. Chastek Co.
Insurance and Surety Bonds
Insurance Building
Second Avenue at Madison Street
Main 9040
Seattle

January 28th, 1942

Mr. Oluf B. Haney
1925 Boren
Seattle, Washington

Date	Charges	Credits	Balance
11/19/41	Franklin Fire #44298		37.50
12/20/41	" " "		37.50
12/23/41	" " "		22.50
1/20/42	" " "		37.50
			<hr/> 135.00

We write Every Kind of Insurance and Surety
Bonds! Chester J. Chastek Co. [93]

(Copy)

January 28th, 1942

Marine View Boat Building Co.

Tacoma, Washington

Attention: Mr. Peterson

Dear Sir:

We enclose for your records, extension endorsement to February 20th, 1942 and once again call to your attention that you should notify us when the engine is ready to be installed.

You will note that our policy reads in the amount of \$15,000.00 with a valuation of \$15,000.00 which is all the liability that there is until the engine is ready to put in.

With our kind personal regards, we remain,

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice President

KHW/vr [94]

January 28th, 1942

Mr. Oluf B. Haney

1925 Boren Avenue

Seattle, Washington

Dear Mr. Haney:

We are enclosing extension endorsement from January 20th to February 20th, together with our statement in the amount of \$135.00 which is the total premium due us, to date.

We should appreciate your check to cover at your

convenience and once again, please make certain to let us know when the engine will leave the Washington Iron Works.

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice President.

KHW/vr [95]

August 30, 1941

Mr. Peter Petersen

c/o Marine View Boat Bldg. Co.

Box 141-A, R.F.D. 6

Tacoma, Washington

Dear Mr. Petersen:

We enclose for your records a copy of the policy covering Hull No. 2 under construction for Mr. Oluf Hanney. Please make certain that you notify us at least one week in advance of the time that you expect to install the engine.

With our kind personal regards, we remain

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice-President

KHW:L

cc Mr. Oluf Hanney [96]

August 30, 1941

Mr. Oluf B. Haney
1925 Boren Avenue
Seattle, Washington

Dear Mr. Haney:

We have issued Franklin Fire Insurance Company policy #44298 in the amount of \$15,000.00 covering your boat while under construction by Mr. Petersen. We thought it best to hold the policy in our office until we were certain as to your present location, but we did want you to know that we had protected your interests in this matter.

If you will let us know where you wish to have us mail the policy, we shall be very pleased to do so.

With our kindest personal regards, we remain

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice-President

KHW:L [97]

January 3rd, 1942

Mr. Peter Peterson
Marine View Boat Building Company
Tacoma, Washington

Re: Franklin Fire Insurance Company
Policy Number 44298

Dear Mr. Peterson:

We enclose your copy of the endorsement to your Builders' Risk policy covering the launching and trial trip of Mr. Haney's boat.

You will recall that when Mr. Moore and I called

upon you in Tacoma at the time that the keel was laid, that we asked you to inform me as to when the engine would be installed so that we could issue the necessary endorsement to cover.

Mr. Haney has informed me this morning, that the engine will be ready in approximately two weeks at which time we are to be notified by the Washington Iron Works, and we will provide the required coverage in accordance with your original instructions to us as well as Mr. Haney's instructions to us.

Should there be any further information which you desire, will you be so kind as to let us know immediately in order that the entire matter may be straightened out to everyone's satisfaction?

Yours very truly,

CHESTER J. CHASTEK CO.

[98]

December 17th, 1941

Mr. Olaf B. Haney
1925 Boren
Seattle, Washington

Dear Mr. Haney:

We are enclosing a copy of the endorsement which we furnished Mr. Peterson with, extending your hull insurance for 30 days from November 20th, together with our invoice in the amount of \$37.50. We are now in the process of extending this policy for an additional 30 days and just as soon as they will be ready to install the engine, we will increase the

amount of the policy to cover you against that hazard.

We shall appreciate your check to cover the invoice enclosed and with our kind personal regards, we remain,

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice President

KHW/vr [99]

December 17th, 1941

Mr. Peter Peterson

Marine View Boat Building Co.

Tacoma, Washington

Dear Mr. Peterson:

I am sorry that I was out of the city when you were in Seattle the other day and I do not quite understand anything that took place.

Mr. Haney, the owner of the boat which you are building, ordered this insurance from our concern and I personally talked with you about it on two or three different occasions. The original policy was written, copy of which was sent to you and the premium was paid to us by Mr. Haney. The original policy was written for a period of three months and was extended on November 20th for an additional 30 days and is now in the process of a further 30 day extension.

So that your own records may be correct, we attach a copy of the original endorsement issued in November and will likewise furnish you with a

further endorsement for the next 30 day period. We are, as usual, billing these to Mr. Haney and we feel sure that everything is being handled in accordance with his instructions to us.

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice President

KHW/vr [100]

December 20th, 1941

Mr. Oluf B. Haney
1925 Boren Avenue
Seattle, Washington

Dear Mr. Haney:

We are enclosing extension endorsement from December 20th, 1941 to January 20th, 1942 in connection with the Hull insurance on your boat under construction.

We likewise attach our invoice in the amount of \$37.50 and trust that you will find it to be in order.

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice President

KHW/vr

cc: Peterson & also a copy of the end. [101]

November 24, 1941

Mr. Oluf B. Hanney
c/o Marine View Boat Bldg. Co.
Box 141-A, R.F.D. 6
Tacoma, Washington

Re: The Franklin Fire Ins. Co.
Policy #44298—

Dear Mr. Haney:

We have extended your policy covering Halibut Boat Hull #20 for one more month, and are enclosing our invoice in the amount of \$37.50 which is the premium for this extension. We trust that meets with your approval.

Kindly let us know when the engine will be installed so that we can endorse your policy accordingly.

With our kind personal regards, we remain,

Yours very truly,

CHESTER J. CHASTEK CO.

KENNETH H. WHEELOCK

Vice-President

khw:w [102]

March 16th, 1942

Mr. Olaf Haney
7740 12th N. W.
Seattle, Washington

Dear Mr. Haney:

The following is your account at is now stands on our books:

5/14/41	Mass.	13482	150.00	
6/11/41	Paid			150.00
8/20/41	FF	44298	111.00	
10/24/41	Paid			111.00
11/19/41	AP	44298	37.50	Nov.-Dec.
12/20/41	AP	44398	37.50	Dec.-Jan.
12/23/41	AP	44298	22.50	
1/20/42	AP	44298	37.50	Jan.-Feb.
2/ 2/42	AP	44298	37.50	
2/25/42	AP	44298	120.00	Feb. to Mar.
2/25/42	CM	44298	322.50	22.50
2/25/52	Paid			75.00
			Balance.....	195.00

[Figures penciled in margin] :

195.00

37.50

157.50

30

127.50

75

202.50

If this does not agree with your records, kindly let us know and we shall recheck our figures again.

Yours very truly,

CHASTEK & WHEELOCK
INC.

KENNETH H. WHEELOCK

Vice President

/vr [103]

(Copy)

Receipt stamp endorsement: Received Jul. 18,
1941. Chastek.

Marine View Boat Building Co.

Box 141-A

R.F.D. 6

Tacoma, Washington

July 17, 1941

Chester J. Chastek Co.

Insurance Building

Seattle, Washington

Dear Sir:

In reply to your letter of July 12th, we wish to
advise that the keel for Mr. Haney's boat, Hull #20,
will be layed in approximately three weeks.

We are unable to designate an exact date at the
present time. However, if the exact date is re-
quired, we will let you know as soon as it has been
established.

Very truly yours,

MARINE VIEW BOAT BLDG.
CO.

PETER PETERSEN

Peter Petersen

PP:ep [104]

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 718

OLUF B. HANNEY, HANS MIKELSEN, and
PAUL VOHL,

Plaintiffs,

vs.

THE FRANKLIN FIRE INSURANCE CO. OF
PHILADELPHIA, PENNSYLVANIA,
a corporation,

Defendant.

JUDGMENT

This cause having come on for trial on the 31st day of October, 1944, before the Honorable John C. Bowen, Judge of the above entitled court, and a jury duly impanelled and sworn to try the cause, the plaintiffs appearing in person and by C. E. H. Maloy, their attorney, and the defendant appearing by Hayden, Merritt, Summers & Stafford, Mathew Stafford and Lane Summers, and the plaintiffs having introduced evidence both oral and documentary, and the defendant having introduced evidence both oral and documentary, and the cause having been argued by respective counsel for plaintiffs and defendant, and the Court having duly instructed the jury, and the jury having retired to consider their verdict, and having on the 2nd day of November, 1944, returned a verdict in favor of the plaintiffs and against the defendant in the sum of

Seventy Two Hundred and 00/100 (\$7200.00) Dollars, and the defendant having filed a motion for judgment notwithstanding the verdict, and the same having thereafter and on Friday, November 10, 1944, been argued to the Court, and said motion having been then denied and overruled, and the Court now being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the plaintiffs, Oluf B. Hanney, Hans Mikelsen and Paul Vohl, have and recover of and from defendant The Franklin Fire Insurance Company of [105] Philadelphia, Pennsylvania, a corporation, the sum of Seventy Two Hundred and 00/100 (\$7200.00) Dollars and interest at the rate of 6 (6%) per cent per annum from February, 24, 1942, until paid, together with plaintiffs' costs taxed herein in the sum of \$71.62 and that execution issue therefor. Defendant excepts to the entry of the judgment and specifically excepts to that portion allowing interest and exceptions allowed.

Done in Open Court this 10th day of November, 1944.

JOHN C. BOWEN

District Judge

Presented by:

C. E. H. MALOY

Attorney for Plaintiffs

Approved as to form:

MATTHEW STAFFORD

Of Counsel for Deft.

[Endorsed]: Filed Nov. 10, 1944. [106]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Oluf B. Hanney, Hans Mikelsen and Paul Vohl,
Plaintiffs above named, and to C. E. H. Maloy,
their attorney:

Notice Is Hereby Given that The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain final judgment in favor of said plaintiffs and against said defendant, entered in the above entitled action on November 10, 1944.

Dated November 16th, 1944.

HAYDEN, MERRITT, SUM-
MERS & STAFFORD
LANE SUMMERS
MATTHEW STAFFORD
Attorneys for Defendant.

[Endorsed]: Filed Nov. 16, 1944. [107]

[Title of District Court and Cause.]

SUPERSEDEAS BOND ON APPEAL

Know All Persons by These Presents:

That The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, as Principal, and United States Fidelity and Guaranty Company, a corporation authorized to do business within the State of Washington, as Surety, are held and firmly bound

unto Oluf B. Hanney, Hans Mikelsen and Paul Vohl, and each of them, in the full sum of Ten Thousand Dollars (\$10,000.00), for the payment of which well and truly to be made we bind ourselves, our successors and assigns jointly and severally firmly by these presents.

Whereas, in the above entitled action judgment was entered in favor of said Oluf B. Hanney, Hans Mikelsen and Paul Vohl, against The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, for the sum of Seventy-two Hundred Dollars (\$7200.00) plus interest and costs, from which The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania is appealing to the United States Circuit Court of Appeals for the Ninth Circuit by the filing herewith of its Notice of Appeal, pending which it desires hereby to stay and supersede said judgment until the determination of said appeal by said appellate court; [108]

Now, Therefore, the condition of the foregoing bond is such that if the said Principal shall prosecute its appeal to effect, shall satisfy said judgment (or any modification thereof by said appellate court) in full, together with all costs, interest and any damages for delay, if for any reason said appeal is dismissed or said judgment is affirmed or modified, and shall satisfy all costs, interest and any damages awarded against it by said appellate court,

then this bond shall be void; otherwise it shall continue in full force and effect.

Dated November 16th, 1944, at Seattle.

THE FRANKLIN FIRE IN-
SURANCE CO. OF PHILA-
DELPHIA, PENNSYL-
VANIA,

(Principal)

By E. C. COCHRANE

Its Marine Manager

[Seal]

UNITED STATES FIDELITY
AND GUARANTY COM-
PANY

(Surety)

By JOHN C. McCOLLISTER

Its Attorney in Fact

The foregoing bond is hereby approved.

C. E. H. MALOY

Attorney for Appellees

The foregoing bond is hereby approved; upon the filing thereof execution of said judgment shall be stayed pending determination of said appeal, subject to the order of said appellate court.

Done in open court November 16, 1944.

JOHN C. BOWEN

U. S. District Judge

[Endorsed]: Filed Nov. 16, 1944. [109]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

and

APPELLANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

The appellant, The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, upon its appeal in the above entitled action relies upon the following points:

(1) That the District Court erred by failure and refusal to grant before and without trial the defendant's motion for summary judgment under Rule 56, argued and submitted on October 31, 1944;

(2) That the District Court erred by entering order denying the defendant's motion for summary judgment under Rule 56 on October 31, 1944;

(3) That the District Court erred by entering final judgment on November 10, 1944, in favor of the plaintiffs and against the defendant, because the latter continued entitled to summary judgment in its favor without trial upon its said motion under Rule 56 as of October 31, 1944;

(4) That the District Court erred in the final judgment entered on November 10, 1944, by allowing interest upon the plaintiffs' unliquidated demand from February 24, 1942, the date of the loss, rather than from November 10, 1944, the date of said judgment. [110]

Further the appellant, The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, designates portions of the record in the District Court to be contained in the record on appeal, as follows:

(1) The whole of plaintiffs' amended complaint, filed September 10, 1943;

(2) Exhibit A attached to plaintiffs' original complaint (being photostatic copy of insurance policy incorporated into plaintiffs' amended complaint by reference);

(3) Exhibit B attached to plaintiffs' original complaint (being list of property lost by fire, incorporated into plaintiffs' amended complaint by reference);

(4) Order of dismissal as to second cause of action in plaintiffs' amended complaint, based upon waiver thereof in open court, filed November 29, 1943;

(5) Defendant's "Request for Admissions under Rule 36", filed October 19, 1944—including as a part thereof agreement attached thereto and mentioned therein as "Agreement of May 14, 1941, between Peter Petersen and Oluf B. Hanney";

(6) Plaintiffs' "Statement in Response to Request for Admissions under Rule 36", filed October 12, 1944;

(7) Defendant's second amended answer to plaintiffs' amended complaint, filed October 28, 1944—including longhand endorsement thereon signed by Mr. C. E. H. Maloy, attorney for plaintiffs, reading as follows: "Plaintiffs hereby consent to the filing of the above. Dated October 25, 1944. C. E. H. Maloy, Attorney for Plaintiffs."

(8) Defendant's motion for summary judgment under Rule 56, filed October 27, 1944; [111]

(9) Order denying defendant's motion for summary judgment, filed October 31, 1944;

(10) Deposition of Henry Stakset, taken October 18, 1944, filed October 26, 1944, and published October 31, 1944;

(11) Deposition of Kenneth H. Wheelock, taken August 4, 1944, filed October 23, 1944, and published October 31, 1944, together with all correspondence designated therein as Plaintiffs' Exhibit No. 1 of Deposition of Wheelock;

(12) Final judgment filed and entered November 10, 1944.

Dated November 16th, 1944.

HAYDEN, MERRITT, SUM-
MERS & STAFFORD

LANE SUMMERS

MATTHEW STAFFORD

Attorneys for Appellant

Copy Rec'd 11/16/44.

C. E. H. MALOY

Atty for Pltff.

[Endorsed]: Filed Nov. 16, 1944 [112]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Wash-

ington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 125, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipies and designations of counsel for appellant filed and shown herein and requested under the provisions of Rule 75 (j) of the Rules of Federal Civil Procedure, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, subject to such order as the Circuit Court of Appeals may hereafter enter, constitute the record on appeal herein from the Judgment dated November 10, 1944, of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act of Feb. 11, 1925) for	
making record, certificate or return,	
101 folios at 15c.....	\$15.15
221 folios at 5c (Copies furnished).....	\$11.05
Appeal fee (Sec. 5 of Act).....	\$ 5.00
Certificate of Clerk to Transcript.....	\$.50
Total	\$31.70

I hereby certify that the above costs in the sum of \$31.70 have been paid to me by the attorneys for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 30th day of November, 1944.

[Seal] MILLARD P. THOMAS,

Clerk

By TRUMAN EGGER

Chief Deputy

[Endorsed]: No. 10938. United States Circuit Court of Appeals for the Ninth Circuit. The Franklin Fire Insurance Co. of Philadelphia, Pennsylvania, a corporation, Appellant, vs. Oluf B. Hanney, Hans Mikelsen and Paul Vohl, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed December 4, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10938

OLUF B. HANNEY, HANS MIKELSEN and
PAUL VOHL,

Appellees,
(Plaintiffs),

vs.

THE FRANKLIN FIRE INSURANCE CO. OF
PHILADELPHIA, PENNSYLVANIA,
a corporation,

Appellant,
(Defendant).

APPELLANT'S STATEMENT OF POINTS
AND APPELLANT'S DESIGNATION OF
RECORD

I.

Appellant hereby adopts and reiterates by reference its "Statement of Points on which Appellant Intends to Rely on Appeal" as contained in certified typewritten transcript on appeal (Tr. p. 110), filed in the above entitled court December 4, 1944.

II.

Appellant hereby designates for printing parts of the record necessary for the consideration of the points upon which it relies, as follows:

(1) The whole of plaintiff's amended complaint, filed September 10, 1943, (Tr. pp. 2-7);

(2) Exhibit A attached to plaintiffs' original complaint (being photostatic copy of insurance

policy incorporated into plaintiffs' amended complaint by reference), (Tr. pp. 8-17);

(3) Exhibit B attached to plaintiffs' original complaint (being list of property lost by fire, incorporated into plaintiffs' amended complaint by reference), (Tr. pp. 18, 19);

(4) Order of dismissal as to second cause of action in plaintiffs' amended complaint, based upon waiver thereof in open court, filed November 29, 1943 (Tr. p. 20);

(5) Defendant's "Request for Admissions under Rule 36", filed October 19, 1944, (Tr. pp. 21-23)—including as a part thereof agreement attached thereto and mentioned therein as "Agreement of May 14, 1941, between Peter Petersen and Oluf B. Hanney," (Tr. pp. 24-27);

(6) Plaintiffs' "Statement in Response to Request for Admissions under Rule 36", filed October 12, 1944, (Tr. pp. 28, 29);

(7) Defendant's second amended answer to plaintiffs' amended complaint, filed October 28, 1944—including longhand endorsement thereon signed by Mr. C. E. H. Maloy, attorney for plaintiffs, reading as follows: "Plaintiffs hereby consent to the filing of the above. Dated October 25, 1944. C. E. H. Maloy, Attorney for Plaintiffs" (Tr. p. 30);

(8) Defendant's motion for summary judgment under Rule 56, filed October 27, 1944, (Tr. p. 31);

(9) Order denying defendant's motion for summary judgment, filed October 31, 1944, (Tr. p. 34);

(10) Deposition of Henry Stakset, taken Octo-

ber 18, 1944, filed October 26, 1944, and published October 31, 1944, (Tr. pp. 35-66), together with Exhibit No. 1, (Tr. pp. 67, 68) and Exhibit No. 2 thereof, (Tr. pp. 69-72);

(11) Deposition of Kenneth H. Wheelock, taken August 4, 1944, filed October 23, 1944, and published October 31, 1944, (Tr. pp. 73-91), together with all correspondence designated therein as Plaintiffs' Exhibit No. 1 of Deposition of Wheelock, (Tr. pp. 92-104);

(12) Final judgment filed and entered November 10, 1944, (Tr. pp. 105, 106);

(13) Appellant's Notice of Appeal, (Tr. p. 107);

(14) Appellant's Supersedeas Bond, (Tr. p. 108);

(15) Clerk's minute entries under date of October 31, 1944, relative to motion for summary judgment, argument thereon, and publication of depositions in connection therewith, (Tr. p. 32);

(16) Appellant's "Statement of Points on which Appellant Intends to Rely on Appeal", (Tr. p. 110), and "Appellant's Designation of Contents of Record on Appeal", (Tr. pp. 111, 112).

Appellant hereby designates for omission from printing parts of the record unnecessary for the consideration of the points upon which it relies. as follows:

(1) Appellant's "Praeceptum for Transcript of Record on Appeal", (Tr. p. 113);

(2) "Appellees' Designation of Additional Portion of Record, Proceedings and Evidence on Appeal", (Tr. p. 114);

(3) Appellees' "Motion for an Order Requiring Appellant to Furnish Additional Portions of Record on Appeal or for Extension of Time", (Tr. pp. 115, 116), including affidavit of C. E. H. Maloy in support thereof, (Tr. pp. 116, 117);

(4) "Affidavit in Behalf of Appellant, Resisting Motion of Appellees for Inclusion of Transcript of Trial Proceedings and Evidence Within the Record on Appeal", (Tr. pp. 118-120);

(5) Order of court granting Appellees' "Motion for an Order Requiring Appellant to Furnish Additional Portions of Record on Appeal or for Extension of Time", (Tr. pp. 121, 122);

(6) Appellant's "Praeceptum for Record", (Tr. pp. 123, 124);

(7) Appellant's "Supplemental Praeceptum for Transcript of Record", (Tr. p. 125).

Dated December 7, 1944, at Seattle.

HAYDEN, MERRITT, SUM-
MERS & STAFFORD
LANE SUMMERS
MATTHEW STAFFORD

Attorneys for Appellant

Copy received Dec. 7, 1944.

C. E. H. MALOY

Attorney for Appellees.

[Endorsed]: Filed Dec. 14, 1944. Paul P.
O'Brien, Clerk.

